

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE
VOLUME 4

IN RE: IN THE MATTER OF :
THE APPLICATION OF ARTESIAN :
WASTEWATER MANAGEMENT, INC., : PSC DOCKET NO. 13-27WW
FOR AUTHORITY TO IMPLEMENT A:
RATE INCREASE PURSUANT TO :
26 DEL C. §§306 (FILED :
JANUARY 18, 2013) :

Public Service Commission Hearing taken
pursuant to notice before Gloria M. D'Amore, Registered
Professional Reporter, in the offices of the Public
Service Commission, 861 Silver Lake Boulevard, Cannon
Building, Suite 100, Dover, Delaware, on Tuesday, August
6, 2013 beginning at approximately 10:05 a.m., there
being present:

APPEARANCES:

On behalf of the Public Service Commission:
MARK LAWRENCE, HEARING EXAMINER

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1 APPEARANCES CONTINUED:

2 On behalf of the Public Service Commission Staff:

3 JULIE DONOGHUE, ESQUIRE

4 On behalf of the Public Service Commission Staff:

5 VINCENT IKWUAGWU, PUBLIC UTILITIES ANALYST III

6 On behalf of the Public Advocate's Office:

7 REGINA IORII, ESQUIRE

8 On behalf of the Public Advocate's Office:

9 HOWARD J. WOODS, JR., CONSULTANT

10 On behalf of Stonewater Creek Homeowners Association:

11 HOWARD KLEIN

12 On behalf of Artesian Wastewater Management, Inc.:

13 JOHN J. SCHREPPLER, II, ESQUIRE

14 DAVID C. SPACHT, CHIEF FINANCIAL OFFICER

15 AND TREASURER

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1 HEARING EXAMINER LAWRENCE: Good
2 morning, everyone. It is 10:05 on Tuesday, August 6th.
3 My name is Mark Lawrence. I'm The Hearing Examiner
4 assigned to Docket No. 13-27WW.

5 This is a rate case filed by Artesian
6 Wastewater Management, Inc., which I'll refer to today as
7 either Artesian Wastewater or AWWMI.

8 Notice for the evidentiary hearing was
9 published in The News Journal on July 1st and July 8th,
10 2013. It was also published in The Delaware Wave on
11 July 2nd.

12 Before we went on the record, the
13 parties agreed to stipulate to certain exhibits that
14 would be admitted into evidence, and I'll get to that in
15 a second.

16 But, I think, that first I want to take
17 appearances from the parties. And I'll begin with the
18 company.

19 MR. SCHREPPLER: Thank you. Good
20 morning, everyone. Good morning to Staff, The Public
21 Advocate, to Mr. Klein and to all present.

22 My name is Jack Schreppler. I'm
23 Vice-President and General Counsel of Artesian Wastewater
24 Management, Inc. Seated to my right is David Spacht, the

1 Chief Financial Officer. We also call our wastewater
2 company AWWI, the initials A-W-M-I. And also from
3 Artesian is our President/CEO and Chairman of the Board,
4 Dian Taylor is here, as well as David Valcarengi and
5 Stephanie Keithley.

6 The company filed this wastewater rate
7 case because the wastewater subsidiary AWWI has been
8 losing money.

9 HEARING EXAMINER LAWRENCE: Mr.
10 Schreppler, I was just going to take appearances.

11 MR. SCHREPPLER: Just appearances. All
12 right.

13 HEARING EXAMINER LAWRENCE: We'll get
14 into all that.

15 MR. SCHREPPLER: Thank you.

16 HEARING EXAMINER LAWRENCE: Moving to
17 the DPA.

18 MS. IORII: Regina Iorii, Deputy
19 Attorney General for The Public Advocate.

20 HEARING EXAMINER LAWRENCE: Staff.

21 MS. DONOGHUE: Jo Donoghue, Deputy
22 Attorney General on behalf of the Commission Staff.

23 HEARING EXAMINER LAWRENCE: Intervenor.

24 MR. KLEIN: Howard Klein, Director of

1 Stonewater Creek Homeowners Association.

2 HEARING EXAMINER LAWRENCE: Before we
3 allow the opening statements, I want to have the parties
4 stipulate to the exhibits on the exhibit list.

5 If you would refer to the exhibit list,
6 the exhibit list currently as 18 items. We pencilled in
7 a 19th item, which is a copy of the bill insert that was
8 sent to Independence Run that has been handed to the
9 parties.

10 So, we have 19 items. Except for
11 Exhibits 12 through 17, which were proffered by the
12 Intervenor, I'm going to ask each party to stipulate that
13 the remainder of the exhibits are admissible into
14 evidence.

15 Exhibits 12 through 17 are currently
16 being copied, and they'll be provided to the parties in a
17 few minutes, and we'll have to go through those exhibits
18 individually in order to determine their admissibility
19 later in this hearing.

20 So, with that being said, does the
21 company agree that Exhibits 1 through 19 with the
22 exception of Exhibits 12 through 17 are admitted into
23 evidence?

24 MR. SCHREPPLER: The company so

1 stipulates with the caveat that the two corrected
2 testimonies that are part of Exhibit 10 have been
3 withdrawn by the Staff, as I understand it.

4 HEARING EXAMINER LAWRENCE: Right.
5 Right. And you're right about that. The two corrected
6 exhibits that are contained in Exhibit 10 have been
7 withdrawn by Staff. Okay.

8 The DPA.

9 MS. IORII: So stipulated.

10 HEARING EXAMINER LAWRENCE: Staff.

11 MS. DONOGHUE: So stipulated, Your
12 Honor.

13 HEARING EXAMINER LAWRENCE: Mr. Klein.

14 MR. KLEIN: So stipulated.

15 HEARING EXAMINER LAWRENCE: Okay. Mr.
16 Schreppler, you can make an opening statement.

17 MR. SCHREPPLER: Thank you, Your Honor.

18 The wastewater utility business became a
19 regulated utility in, approximately, 2006. I may be off
20 by a year or so, Your Honor. And Artesian, or AWWMI,
21 filed the tariff that is now in effect at that time, and
22 the rates have been at \$75 dollars per month per
23 household or Equivalent Dwelling Unit, which we also call
24 EDU, since that time.

1 AWMI filed this rate case because the
2 revenues paid by the ratepayers are not sufficient to
3 cover the expenses of AWMI. Those revenue shortfalls
4 have been covered by developers' subsidies that Artesian
5 negotiated with developers.

6 The original revenue requirement that we
7 sought, I don't recall, but, I believe, it translated to
8 rates of about \$98 dollars per month.

9 This case has been vigorously litigated
10 by Staff and the DPA and by the Intervenor and the
11 company. It's a small case. And I want to compliment
12 everyone for litigating this with, I think, measured
13 resources. I appreciate that Staff did not engage a
14 consultant because the DPA has a very capable consultant
15 in this case.

16 The parties last week engaged in
17 settlement discussions over the phone. We had planned to
18 get together on Wednesday here in Dover, but it appeared
19 that we were at an impasse. And then on Thursday and
20 Friday by telephone, we resumed negotiations with The
21 Public Advocate and the Staff, and it resulted in a
22 settlement agreement that will be shortly before you.

23 The rate increase has been greatly
24 reduced. Essentially, there would be a five dollar

1 increase this year from \$75 to \$80 dollars per month.
2 And then a second step, a five dollar increase from \$80
3 to \$85 dollars, one year after the Commission approves
4 this settlement agreement, assuming that it is approved.
5 If it's not approved, then we will have to deal with
6 that.

7 We believe that it is in the company's
8 interest and in the public interest, and we support and
9 endorse the settlement agreement.

10 Mr. Spacht is available as the company's
11 witness to adopt the prefilled testimonies. He is
12 available for cross examination by any party that wishes
13 to cross examine him.

14 HEARING EXAMINER LAWRENCE: Okay. Does
15 DPA have an opening statement?

16 MS. IORII: No opening statement.

17 HEARING EXAMINER LAWRENCE: Staff.

18 MS. DONOGHUE: Yes, Your Honor.

19 Staff would like to make a brief opening
20 statement.

21 Adding to what Mr. Schreppler has said
22 on behalf of the company in his opening statement, Staff
23 would just like to point out they conducted an extensive
24 review of this application.

1 And as the review went on, the company
2 did file supplemental testimony, which changed some of
3 the application's information, including the proposed
4 rate per EDUs.

5 After further review and after several
6 attempts to try to negotiate this particular settlement,
7 the parties did finally reach an agreement.

8 And Staff has concluded, and will have
9 testimony to support, that the terms of this particular
10 settlement agreement do address the four primary issues
11 that Staff had with this application, including the
12 supplemental testimony that revised the application.

13 Staff will testify today that they
14 believe that this settlement agreement does have a
15 resulting fair and reasonable rate for all of the
16 ratepayers that are affected by this application.

17 And Staff will also testify to the fact
18 that we believe that this settlement agreement is in the
19 public interest.

20 Thank you, Your Honor.

21 HEARING EXAMINER LAWRENCE: Okay. Thank
22 you. Intervenor.

23 MR. KLEIN: Yes. I just want to go on
24 the record saying that the Stonewater Creek Homeowners

1 Association is probably the only one here that really
2 represents the ratepayers because we are the ratepayers.

3 It was pretty much cut out of the
4 process of the negotiations. We were only able to attend
5 one negotiation meeting. And actually, I found out about
6 that one by accident, but we went.

7 We were told in the middle of this week,
8 I believe it was Wednesday, that the negotiations had
9 broken down and they were terminated. And we would just
10 be proceeding right to this evidentiary hearing.

11 I got an E-mail late Friday afternoon,
12 1553 hours military time, and I was told that a
13 settlement had been reached, much to my surprise.

14 We, the ratepayers, do not believe it is
15 a fair settlement. I think if we were allowed to take
16 part in the negotiation, we could have reached an
17 equitable agreement, and we wouldn't be sitting here
18 today. And that is the statement I wanted to make on the
19 record.

20 Thank you.

21 HEARING EXAMINER LAWRENCE: Okay. Let's
22 begin with the company.

23 Would you, please, swear Mr. Spacht in
24 as the first witness.

1 DAVID C. SPACHT, having first been duly
2 sworn according to law, was examined and testified as
3 follows:

4 (DIRECT EXAMINATION)

5 BY MR. SCHREPPLER:

6 Q. Mr. Spacht, would you start, please, by
7 stating your title at Artesian and your length of
8 service?

9 A. I'm the Chief Financial Officer and Treasurer.
10 I'm responsible for regulation, financing, et cetera.
11 I've been with the company since 1980, approximately
12 33 years.

13 Q. Mr. Spacht, are you involved with any national
14 organizations that involve rate setting principles?

15 A. I've been invited to and have participated on
16 the faculty of the NARUC rate school on the East Coast
17 and West Coast and have been done so for at least the
18 last 12 years as part of their national program through
19 the University of Michigan.

20 Q. Could you tell The Hearing Examiner your
21 involvement in this present rate application?

22 A. Yes. I worked as advisor to Dave Valcarenghi
23 and Brian Carbaugh. And I am adopting their testimonies
24 for the sake of ease for this hearing, primarily because

1 of my knowledge base and ability to answer any other
2 questions that may arise at this hearing.

3 Q. So, you're familiar with the prefiled
4 testimony of Brian Carbaugh regarding utility plant in
5 service and rate base?

6 A. I am.

7 Q. And do you adopt that testimony?

8 A. I do.

9 Q. And are you familiar with the prefiled
10 supplemental and rebuttal testimonies of Mr. Valcarengi?

11 A. I am.

12 Q. And do you adopt them?

13 A. I do.

14 Q. Mr. Spacht, please give The Hearing Examiner
15 your opinion of the fairness and reasonableness of this
16 settlement agreement with respect to the company and with
17 respect to ratepayers?

18 A. Well, I directly worked with the Staff and
19 intervenors and my own staff to arrive at the numbers and
20 negotiated the settlement with the DPA and Staff and
21 believe that the result curtails the expenses involved in
22 this case, arrives at a reasonable result that may have
23 otherwise be reached during a fully litigated case. And
24 we believe it's just and fair and reasonable rates.

1 Q. Mr. Spacht, do you have anything else you want
2 to tell The Hearing Examiner as part of Artesian's case
3 in chief?

4 A. I think that all of the parties worked
5 diligently together. I think we had a good first
6 settlement discussion. We had a lot of discussion that
7 first session where Mr. Klein was available and had, I
8 think, good back and forth discourse on how rates were
9 set -- how we were arriving at some of the numbers.

10 I appreciate Staff's audit. They were
11 out to review our books and records. I thought that went
12 well. So, I thought all parties cooperated very well in
13 this case.

14 MR. SCHREPPLER: Thank you, Your Honor.
15 That's all I have for Mr. Spacht. He is available for
16 cross examination.

17 HEARING EXAMINER LAWRENCE: DPA, any
18 cross?

19 MS. IORII: Not for Mr. Spacht. No.

20 HEARING EXAMINER LAWRENCE: Staff.

21 MS. DONOGHUE: Yes, Your Honor. Just
22 one question.

23 (CROSS EXAMINATION)

24 BY MS. DONOGHUE:

1 Q. Mr. Spacht, you did testify just now that you
2 believe that we would have reached the numbers in this
3 settlement agreement through a hearing if it had been
4 held.

5 Is that correct?

6 A. That's my belief.

7 Q. Do you believe that the company has made any
8 concessions in this settlement agreement that you
9 wouldn't have otherwise made if we had gone to a full
10 hearing?

11 A. Yes.

12 MS. DONOGHUE: Thank you. No further
13 questions, Your Honor.

14 HEARING EXAMINER LAWRENCE: Intervenor.

15 MR. KLEIN: Yes. I have a couple of
16 questions.

17 (CROSS EXAMINATION)

18 QUESTIONING BY MR. KLEIN:

19 Q. How did the Artesian Wastewater Management
20 Company come into being? You weren't in the wastewater
21 business before 2005. Am I correct?

22 A. That's correct.

23 Q. So, how was it decided that you were going to
24 go into the wastewater business?

1 A. We were approached by a developer who was
2 building Stonewater, actually, and we were providing
3 water service, but they couldn't get wastewater service
4 from the County. We were asked to provide that service.
5 We had the ability to do so. We entered into an
6 agreement to begin that service.

7 In the meantime, we also cooperated with
8 the Delaware Public Service Commission and others to
9 adopt regulations whereby the wastewater business would
10 become a regulated business. Originally it started out
11 being non-regulated. But the statutes were passed.
12 Regulations were then passed. And we fell under the
13 regulations that were adopted by the Commission to become
14 a regulated wastewater utility. And then we filed rates
15 with the Public Service Commission and those service
16 territories. So, that's how we became a regulated
17 wastewater utility.

18 Q. I'm going to assume, God, I hate that word, I
19 assume that the developer approached the Artesian
20 Resources Corporation, since AWWI did not exist at that
21 time.

22 Am I correct there?

23 A. We had a subsidiary that was doing wastewater
24 operations as a non-regulated utility. That was Artesian

1 Utility Development Incorporated and was actually working
2 in the wastewater business as a contractor operator for
3 Middletown.

4 We were approached for the water service
5 and asked whether we could provide that service.
6 Afterwards, we did, after we became a regulated company,
7 we did form Artesian Wastewater Management, Inc., as a
8 separate regulated utility outside of our non-regulated
9 business of Artesian Utility Development Incorporated.

10 Q. Now, I take it AWWMI falls under the blanket of
11 a parent corporation or parent holding company of
12 Artesian?

13 A. It is a subsidiary of Artesian Resources
14 Corporation. Yes.

15 Q. Mr. Valcarengi, in his response to the Public
16 Service Commission, I guess, it was their second round of
17 questioning, he was talking about AWWMI billing on a
18 monthly basis. And it's stated on his testimony at Page
19 3, Lines 6 through 19, Operating expenses greater than
20 operating revenues provided by the customer requires
21 funding from shareholders.

22 Now, you believe that if a company
23 decides to go into a new business, which AWWMI was,
24 basically, a new business, no new business that I know of

1 starts off in the black. But do you believe that the
2 ratepayers should be funding start-up operations versus
3 stockholders?

4 A. That's an extremely broad question, but let me
5 break it down into a couple of pieces.

6 Q. Go for it.

7 A. One, we began operations in 2006. This is
8 2013. We sustained losses, as we had predicted and
9 budgeted for, for three to four to five years.

10 We also implemented in all of our
11 agreements a developer contribution that included a
12 subsidization of the facilities that are built because
13 our model showed that they needed to support those
14 expenses until there was sufficient customer base to then
15 allow the plants to run sufficiently and efficiently.

16 So, we knew all of that through the
17 first three or four years even up into the fifth year.
18 We're now into the sixth and seventh years. Expenses
19 have risen, and they do rise from year to year, not as
20 much as they had been back in the '80's or '90's, but
21 certainly they are rising. These cost increases have to
22 be recovered somehow. The subsidies are set, and they
23 are set to cover the operations, and we're still
24 receiving those subsidies, as we've shown in the

1 application.

2 But simply put, the expenses are rising
3 as well and have to be covered. That is where the rate
4 increase came from. And that's why the rate increase is
5 being passed onto the customers at this point.

6 Q. Now, in Mr. Valcarenghi's testimony, he said
7 the subsidies are received in arrears and generally long
8 after expenses are incurred. I mean, I would agree with
9 that.

10 A. That's correct.

11 Q. Now, usually the subsidies are subsidies from
12 the developer.

13 Am I correct there?

14 A. All of the subsidies are from the developers.

15 Q. Now, as far as the ratepayer goes, when the
16 ratepayer is late with a payment, that is addressed
17 through a fee, a late fee or penalty fee. And I believe
18 you folks get one-and-a-half percent a month, which is
19 18 percent per annum.

20 Am I correct there?

21 A. I believe that's correct. Although I think we
22 had adjusted that. But for sake of argument --

23 Q. That's what the existing tariff states.

24 So, when you come up with this new rate

1 base with this thing called CWC, which is working cash
2 capital.

3 A. Mum-hum.

4 Q. Why would working cash capital for the
5 ratepayer be included if the remedy for them is a late
6 fee?

7 A. Cash working capital is not a recognition of
8 the ability to pay or the lateness in paying. Cash
9 working capital is a recognition that the company always
10 takes money out of its pocket early to pay for expenses
11 before service is rendered and the payment is received.
12 So, it's a measurement between if it was paid on time and
13 the services rendered. The difference in that time is
14 the amount of money that the company has to have
15 available to pay for services or for expenses before the
16 service is rendered.

17 The late fee is recognition of the time
18 that's spent after that normal fee is paid. So, that
19 recognizes the later fee that is associated with carrying
20 cost.

21 For the contract ops, the reason that
22 those are received after the fact, and if you'll notice,
23 our calculation of cash working capital did not include
24 the portion associated with the subsidies. It was only

1 applied to those associated with the flat fees. So, we
2 did not recognize anything to do with those subsidies in
3 our request.

4 However, those payments for money that's
5 paid out by the company are received on a calendar basis.
6 The required revenue subsidies, if not done through
7 normal hook ups during the year, are caught then at the
8 year end and billed to that developer so that those
9 payments are received. We reflect it in our income
10 statement. We reflect it in the rate calculations so
11 that the customer is not subsidizing the development.
12 The developer is still paying for his share. So, if you
13 look on our application, you'll see that better than half
14 of the revenues are coming from these subsidies from the
15 developer. That's so the ratepayer doesn't have to
16 makeup additional cost.

17 But the cash working capital has nothing
18 to do with that subsidiary piece. It's strictly the lag
19 in time between the time service is rendered and the
20 payment would have been received.

21 Q. Let me go into that particular point.

22 Artesian Wastewater Management bills on
23 a monthly basis?

24 A. Yes.

1 Q. And they bill prior to service being rendered.
2 They bill a month in advance?

3 A. Yes.

4 Q. There is, basically, 25 days that are given to
5 the customer to pay. Usually more time, 30 days in the
6 businesses that I ran, but it's 25 days. And after that
7 25 days, the one-and-a-half per month goes into effect on
8 the unpaid balance.

9 So, I can't, in my mind's eye, foresee
10 that many customers being beyond the 30 days that service
11 is rendered that we pay for in advance.

12 Is customer lateness that prevalent? Is
13 it that much of a problem?

14 A. There is a study that gets done. And yes,
15 there is a lag between the time bills are mailed out,
16 shall we say, received and then the 25 days. There is a
17 lot of leniency given. And that is not exactly 25 days
18 from the first of the month. That is when the billed is
19 for -- billed in advance. Generally speaking, those
20 bills are not received until halfway through the month
21 and then it is when it is paid after that.

22 Normally there's a study done to
23 calculate all of that. We did not do it in this case.
24 Simply too small to do it. The normal method when you

1 don't go all of that calculation is a one-eighth moved.
2 That's the method we adopted. There has been a lot of
3 discourse on that. The settlement, more or less, black
4 boxes it and we do nothing with it. We just settled on a
5 rate base number without consenting to either having or
6 not having cash working capital included in it.

7 Q. So, in this rate base that you have settled
8 with the Public Service Commission and the --

9 MS. DONOGHUE: Your Honor, just to
10 clarify. It's the Public Service Commission Staff, not
11 the Commission itself.

12 MR. KLEIN: I'm old. What can I tell
13 you.

14 QUESTIONING BY MR. KLEIN:

15 Q. With the Staff of the Public Service
16 Commission and the Staff of the DPA, cash working capital
17 was not part of the mix in coming up with the rate base?

18 A. There was no specificity put around any of the
19 numbers other than the final results. That's what we
20 call a black box. We agreed to disagree. We came up
21 with our number and that is where we stayed with it.

22 So, there were concessions made on the
23 company's part, which may have included some cash working
24 capital. It could have included some of the expenses.

1 There was no specificity put around all of those
2 individual arguments, and they are allowed for a later
3 date. That is what we call black box. We had things to
4 give, the Staff had things to give, and the DPA had
5 things to give. It just netted out to the numbers we
6 arrived at.

7 So, without specificity, no, I can't say
8 any specific number was adopted.

9 Q. To me, a black box is when you crash your
10 aircraft, that's what they go to recover.

11 Are the employees, and when I say the
12 "employees," I realize that Artesian Wastewater
13 Management does not have specific employees. They are
14 subcontracted from your other sister companies within the
15 organization?

16 A. Yes. The utility.

17 Q. The employees, are they unionized, or are they
18 nonunion workers?

19 A. We do not have union workers.

20 Q. Are your employees paid what is considered the
21 prevailing wage by the Department of Labor?

22 A. How best to address that. I would say not as
23 published by the Labor Department. I would say that we
24 have studies that are done every five years to assure

1 that our salary ranges and salaries provided to our
2 various groups and levels are fully analyzed and adjusted
3 accordingly. Those studies are submitted in conjunction
4 with rate applications. In fact, the next application we
5 have with our water case, we will have a submission of
6 those compensation surveys that are done, specifically
7 for the Commission to review those salary ranges.

8 Q. And I take it that this study is the analysis
9 that is performed by Astron Solutions that was referred
10 to in Mr. Valcarenghi's testimony?

11 A. I'd have to double check. I'm not familiar
12 with that. Our compensation committee of the board
13 actually hires those compensation consultants. So, I'm
14 not sure that was the name.

15 Q. How does the company account for the hours
16 spent working on the plants by the different components
17 of the -- let's say -- the parent holding company?

18 A. For the operations personnel that visit the
19 stations and do the maintenance work, there is direct
20 time sheets that are submitted daily. Those time sheets
21 then are charged directly to the company and an
22 appropriate measure of the benefits, such as the medical
23 and everything else, is also then charged to the
24 subsidiary. So, it's a direct time sheet for those that

1 are working on the plants directly and on the systems
2 directly.

3 For the administrative personnel that
4 are in our offices, which would include the customer
5 service, the billing, accounting, executive, the other
6 expenses normally associated with the business, they are
7 allocated based upon a cost allocation manual, which was
8 approved by the Public Service Commission in submissions
9 that were made in a rate case previously.

10 So, we have a manual that we go by to
11 actually allocate those expenses according to
12 methodologies that have been adopted by this Commission.

13 Q. The field personnel that are visiting these
14 plants, are these time sheets broken down between, let's
15 say, I have to use terminology that I'm familiar with,
16 journeyman, apprentices?

17 A. Yes. They are all charged whatever rates they
18 happen to be at their level. They are charged the exact
19 cost of their labor to the company. I mean, we know who
20 they are. They're charged by personnel. So, if I'm
21 answering your question correctly.

22 Q. Yes, you are.

23 A. Yes.

24 Q. I, basically, have one more question, and it's

1 on the return on equity issue.

2 What are you taking as the equity that
3 you want the return on, is it the market capitalization
4 of the shareholders of common stock?

5 A. There are shareholders' equity that is listed
6 on the balance sheet. It's the amount of funds that have
7 been invested by the parent company from its shareholders
8 into the wastewater company. We have to have a certain
9 amount there to support the debt that is being spent by
10 that company. So, it would be on the shareholders'
11 equity portion of that.

12 There is above that earnings that are
13 earned after utility plant for the interest on the
14 short-term debt. But you are specific in equity. So,
15 that would be associated with the shareholders' equity.

16 Q. And returned equity?

17 A. Mum-hum.

18 Q. So, it's the shareholders' equity and returned
19 equity?

20 A. And retained earnings.

21 MR. KLEIN: Okay. That's fine. Thank
22 you.

23 HEARING EXAMINER LAWRENCE: Mr.
24 Schreppler, any redirect?

1 MR. SCHREPPLER: No redirect, Your
2 Honor. And that concludes the company's case.

3 HEARING EXAMINER LAWRENCE: DPA.

4 MS. IORII: Thank you, Mr. Hearing
5 Examiner.

6 The Public Advocate would call Howard
7 Woods to the stand and ask that he be sworn.

8 HOWARD J. WOODS, JR., having first been
9 duly sworn according to law, was examined and testified
10 as follows:

11 (DIRECT EXAMINATION)

12 BY MS. IORII:

13 Q. Good morning, Mr. Woods.

14 Would you, please, state your name and
15 business address for the record?

16 A. Yes. My name is Howard J. Woods, Junior. And
17 my address is 138 Liberty Drive, Newtown, Pennsylvania.

18 Q. By whom are you employed?

19 A. The Department of Public Advocate.

20 Q. You were retained by The Public Advocate for
21 this particular case?

22 A. Yes. I'm an independent consultant that has
23 been retained by The Advocate for this particular matter.

24 Q. And did you review the application and the

1 application submitted by the company for an increase in
2 its wastewater rates?

3 A. Yes, I did.

4 Q. And what did you do in connection with your
5 review of that application?

6 A. I reviewed the schedules that were submitted
7 by the company in its original filing. The updated
8 schedules that were included in the supplemental
9 testimony presented by Mr. Valcarenghi. I assisted The
10 Public Advocate in developing discovery requests to
11 obtained additional information about the filing and
12 analyzed the responses to those requests.

13 In addition, I developed my own set of
14 schedules to reflect my interpretation of the proper
15 level of expenses, rate base, rate of return and
16 calculated a proposed rate.

17 Q. And after your investigation, did you submit
18 prefiled testimony on behalf of then the Attorney General
19 who was involved in this case consisting of 24 pages, two
20 appendices and ten schedules?

21 A. Yes, I did. That's correct.

22 Q. Is that the same testimony that has been
23 marked as Exhibit 7?

24 A. Yes.

1 Q. And did you subsequently find that you needed
2 to make corrections to your testimony?

3 A. Yes. In the discovery process, I was
4 responding to requests that were submitted by the company
5 to the DPA. I realized that I had double counted certain
6 revenues particularly associated with inspection fees and
7 those sort of things, other wastewater revenues, and made
8 corrections to eliminate that double counting in
9 discovery.

10 Q. And are those changes the same changes and
11 schedules that have been marked as Exhibit 8?

12 A. Yes, they are.

13 Q. With those changes, if I were to ask you the
14 questions in your testimony today, would your answers be
15 the same?

16 A. Yes, they would.

17 Q. Now, are you familiar with the settlement
18 agreement that Artesian, the Commission Staff and The
19 Public Advocate have executed and are submitting for the
20 Commission's consideration?

21 A. Yes, I am.

22 Q. Can you describe the nature of that
23 settlement?

24 A. Certainly. With respect to rates, the

1 settlement agreement adopts a phase-in schedule for the
2 rates. Initial rate, if the agreement is approved by the
3 Commission, would be set at \$80 dollars per month. That
4 would remain in effect for one year from the date of
5 approval, an effective date authorized by the Commission.
6 After that year, the rate would increase to \$85 dollars
7 per month and continue on.

8 In addition to the rate agreement, we
9 also have agreed that Artesian will withdraw its various
10 tariff language request for consideration at another
11 time.

12 Q. And you're aware that the Stonewater Creek
13 Homeowners Association has not agreed to the proposed
14 settlement?

15 A. Yes.

16 Q. In your opinion, does the proposed settlement
17 result in just and reasonable rates, and is it in the
18 public interest?

19 A. Yes. I believe it is.

20 Q. And why do you believe that?

21 A. Well, the settlement agreement that we have I
22 believe balances a number of different issues. If I can
23 summarize the DPA's position on certain issues that were
24 significant to us.

1 We felt that the cost of capital, the
2 rate of return on rate base should be a lower amount than
3 what the company requested.

4 We also made numerous adjustments for
5 operating expenses to normalize those expenses.

6 We made adjustments to rate base solely
7 on the issue of cash working capital. We agreed with the
8 company's supplemental testimony with respect to the
9 other rate base items, which include utility plant in
10 service. The amount of contributions in-aid-of
11 construction and so forth. So, the only issue we had on
12 rate base was the cash working capital allowance.

13 We also had an issue on revenues, the
14 developers' subsidies. Our position was that those
15 revenues should be normalized, rather than adjusted from
16 the test year level.

17 All of those issues taken together gave
18 us a lower rate than what was in the company's filing,
19 company's filing and in the supplemental testimony. And
20 in the supplemental testimony, the company is looking for
21 a rate of \$88 dollars per month. In our corrected,
22 prefilled testimony, our rate was \$77.52. We had, in
23 round numbers, an \$11 dollar spread over rates.

24 In the discussions that we had with

1 Staff, the Intervenor and with the company leading up to
2 today, we had looked at those issues and concluded that
3 if we continued to fully litigate the case, two things
4 would happen.

5 One, we would drive up the cost that
6 would ultimately be passed onto the ratepayer. And we,
7 in all likelihood, would end up with a settlement that is
8 a settlement of the case through full litigation that is
9 comparable to what we have in the settlement agreement.

10 In fact, I think the settlement
11 agreement does give us one significant advantage over
12 saving the cost of litigation. And that is the delayed
13 implementation of rates. We are looking at an \$80 dollar
14 rate right now and deferring the full increase to \$85
15 dollars for one year. I think that allows us the
16 opportunity to revisit again at some future time when the
17 company is in for rates the impact of developers'
18 subsidies and whether, in fact, they have or have not
19 declined. It accounts for the likely increase in
20 operating expenses these are going to occur over that
21 period of time, over that one-year period of time, and
22 the additional rate base items that the company will have
23 at that point in the future, additional investments in
24 utility plant, in particular.

1 So, I think overall, the settlement
2 balances a lot of the issues. The DPA did not get
3 everything it wanted. I'm sure it's fair to say neither
4 the Staff or the company got what they wanted entirely in
5 the settlement. So, I think it is a fair and equity
6 balance involving all of those issues.

7 Q. Mr. Woods, you were The Public Advocate's
8 witness in the most recent Tidewater Environmental
9 Services case.

10 Correct?

11 A. Yes. That's right.

12 Q. And how did the proposed rates in the
13 settlement agreement compare with what TESI customers are
14 paying?

15 A. Well, the settlement rates are somewhere in
16 the middle of the road.

17 TESI's tariff structure is much
18 different than AWWMI's structure. The biggest difference
19 is that for each individual system that's owned and
20 operated by TESI, there is a separate and distinct rate.

21 By contrast, AWWMI has a consistent rate
22 that's applicable through all of its service territories.
23 It is the same rate whether you're in Stonewater Creek or
24 in a different development.

1 So, when I look at the AWM rate, what I
2 see is that the AWM rate is right about in the middle.
3 The TESI's rates range from an average monthly charge of
4 \$125 dollars per month, that is the highest one, down to
5 \$46 dollars per month, The Plantation system that was
6 just recently acquired by TESI.

7 MS. IORII: Thank you, Mr. Woods. Mr.
8 Woods is available for cross examination.

9 HEARING EXAMINER LAWRENCE: Any cross by
10 the company?

11 MR. SCHREPPLER: No, Your Honor.

12 HEARING EXAMINER LAWRENCE: Staff.

13 MS. DONOGHUE: Yes. Your Honor, we have
14 a couple of questions for Mr. Woods.

15 (CROSS EXAMINATION)

16 BY MS. DONOGHUE:

17 Q. Mr. Woods, you testified that the parties have
18 agreed as part of this settlement agreement that there
19 would be a phase in of new rates, and your words were it
20 would be \$80 dollars per month for the first year and \$85
21 dollars per month for the second year.

22 I noticed that on Page 3 of the
23 settlement agreement, it refers to \$80 dollars per EDU
24 and \$85 dollars per EDU.

1 Would you like to reconcile your
2 testimony or, perhaps, clarify why you refer to it as per
3 month?

4 A. The rate is billed monthly. The \$80 dollar
5 rate is billed per EDU, or Equivalent Dwelling Unit. For
6 an individual home that uses 300 gallons per day, that is
7 the definition of an EDU. So, each of those types of
8 customers would get a bill of \$80 dollars per month. And
9 then, a year later that would go to \$85 dollars per
10 month.

11 MS. DONOGHUE: Thank you. No further
12 questions.

13 HEARING EXAMINER LAWRENCE: Intervenor.

14 MR. KLEIN: I have a couple of
15 questions.

16 QUESTIONING BY MR. KLEIN:

17 Q. Mr. Woods, I'm not going to use your first
18 name simply because I will confuse myself.

19 A. And the record will be confused.

20 Q. When you did your analysis, I guess you
21 realized that most of these communities are not built out
22 yet?

23 A. Yes. That's correct.

24 Q. As a matter of fact, they are probably, I

1 would say, about 50 percent built out.

2 Is that fair?

3 A. I think less. Overall, the company has about
4 36 percent of the customers that it would have if all of
5 the communities were built out.

6 Q. Was anything taken into consideration as far
7 as these communities built out, let's say by a miracle of
8 God a building boom and these communities built out, the
9 amount of revenue that AWWMI would get would substantially
10 increase, without their cost substantially increasing
11 since a lot of the communities the wastewater treatment
12 plants have been built and they do not have to be
13 standard.

14 So, on the per customer basis, did you
15 do any kind of analysis about how much it would cost the
16 company per customer versus how much they would get for a
17 new customer?

18 A. Yes. I did look at that. And there are a
19 number of issues wrapped up in your question. So, if you
20 could bear with me for a little while, I might be talking
21 for a little bit.

22 What AWWMI is facing is very typical of
23 what all new utility systems face.

24 In order to get started, they have to

1 make investments in plant facilities, and in wastewater
2 facilities, that's extremely expensive on a per customer
3 basis. Someone has to provide for the construction of
4 the plant that's going to treat the wastewater. Someone
5 has to provide for the construction of the collection
6 system that's going to collect the wastewater from each
7 individual home or business that's connected to it and
8 deliver it to that wastewater plant so that it can be
9 treated.

10 For systems like those that are served
11 by AWWI, basically, individual development systems, the
12 size of those facilities are such that it's extremely
13 difficult to phase construction.

14 We're not talking about building a brand
15 new 30 million gallon a day wastewater plant for the City
16 of Wilmington that might be able to be done in several
17 phases over many, many years. We have a situation where
18 for a few hundreds homes, the wastewater plant that would
19 be required for all of those homes really needs to be in
20 service almost on day one.

21 Now, recognizing in Delaware, the
22 Department of Natural Resources regulations do allow a
23 small number of customers to be dealt with on a
24 haul-and-treat basis. In other words, the wastewater can

1 be collected in a tank or a manhole and hauled away to
2 some other site for a period of time and treated
3 elsewhere. But that only applies to a very small number
4 of customers. A few dozen customers at most.

5 So, investments need to be made in these
6 facilities when, basically, no one is there to be served
7 by the system. And those systems need to be maintained
8 and operated according to DNREC rules. So, that also
9 requires labor expenses to be incurred. Power bills are
10 not going to vary very much, but they will vary somewhat
11 based on the volume of water that's treated. Maintenance
12 of the assets is, essentially, a fixed cost. The pumps
13 are there. The electrical equipment is there, and they
14 need to be attended to on a cycle or a regular sequence.

15 So, in the early days for any of these
16 systems, most of the expenses will be incurred from day
17 one even though the customers aren't there.

18 I tried to take a look at that to see
19 how the existing operating expenses would vary based on
20 the number of customers. And certainly, chemicals, to an
21 extent, waste disposal and, to some degree, power bills
22 will vary, but hardly anything else will. The labor
23 costs. AWWMI is a little bit unique because they don't
24 have any employees. They assign employees as work is

1 required. But the level of effort required to maintain
2 and operate these systems is really not going to change
3 from where they are now with 36 percent of their
4 customers to where they're likely to be when they have
5 one hundred percent of their customers.

6 That dilemma is what I believe AWWI
7 attempted to address in the developer service agreements.
8 The developer service agreements has the developers
9 paying for some of the capital equipment. The collection
10 system, for example, is largely contributed property from
11 the developers. Portions of the wastewater treatment
12 plants are contributed to the property.

13 So, if you look at the company's books
14 what you'd see is that in total they have about
15 \$19 million dollars in round numbers of utility plant in
16 service. The value of the plants, the pumps, the pipes,
17 all of the things that makeup the wastewater system is
18 worth right around \$19 million dollars.

19 Yet, the amount of that investment that
20 the company is allowed to earn a rate of return on is
21 only around \$4.2 million dollars. All of the parties
22 around the table have a little bit of a disagreement
23 about that final number, but it's all pretty much in that
24 same ball park, around \$4.2 million dollars.

1 So, the delta between those two numbers
2 is, essentially, contributed plant. That was provided by
3 the developers or builders of the homes. And AWMI will
4 not earn a rate of return on that ever.

5 The other element of the developer
6 service agreements is an attempt to try to reconcile what
7 actually happens from an operating perspective between
8 the time the first customer is connected to the system
9 and the time we reach what I'll call a break even point
10 where rates can satisfy all of the requirements for rate
11 of return, operating expenses and so forth.

12 And I think that the company has to get
13 to the point where about 75 percent of its customers are
14 actually connected to the system before the developers'
15 subsidies can go away.

16 At the present time, if you look at the
17 mix of revenues that are coming into the company, roughly
18 42 percent of the revenues coming into the company are
19 provided by developers subsidies.

20 So, the developers are trying to fill
21 the gap. I think at this point in time where they are is
22 fair. It is doing what it's intended to do.

23 But my big concern is that over time
24 those subsidies may decline.

1 In 2005, and a few years after when the
2 company was negotiating those agreements with the
3 developers, I think everybody was fairly optimistic about
4 the rate at which development would occur.

5 You mentioned, Mr. Klein, the chance
6 that there might be a building boom. If that were to
7 happen, I think that would be a great thing because it
8 would get the company quickly to the point where the
9 subsidies are no longer necessary to provide service.

10 And the rates that I believe we are
11 adopting as a result of the settlement, and, hopefully,
12 the Commission will approve, I think will allow rate
13 stability to continue as building continues at some rate
14 in the system and the developer subsidies declined.

15 We would very much like to see the
16 company come back in a couple of years, which they
17 suggested they may do, so we can take a look at that
18 issue. We're really concerned that as the developer
19 agreements expire and the operating subsidies start to go
20 away, there would be a natural tendency for the company
21 to want to shift the risk of that condition to
22 ratepayers. And we don't like that to happen or want
23 that to happen. That has been our position in this case
24 all along, and it will be our position in the future.

1 Q. We're in agreement on that.

2 A. Yes.

3 Q. You were talking about the tariff --

4 A. Yes.

5 Q. -- the Tidewater tariff?

6 A. Yes.

7 Q. Now, you're aware that Artesian, shall we say,

8 Artesian Resources, which is the parent company of

9 Artesian Wastewater, is a publicly traded company?

10 A. Yes. That's right.

11 Q. It is capitalized through investments.

12 Tidewater is not a publicly traded
13 company?

14 A. Tidewater is wholly owned by Middlesex Water
15 Company, which is publicly traded.

16 Q. True. I couldn't find them on the Stock
17 Exchange.

18 HEARING EXAMINER LAWRENCE: Publicly
19 traded on NASDAQ.

20 MR. WOODS: Middlesex Water Company is
21 their parent company.

22 QUESTIONING BY MR. KLEIN:

23 Q. My next question is, were you part of the
24 negotiations for the settlement agreement?

1 A. I was not involved at all with the
2 conversations. But I was certainly supporting The Public
3 Advocate during the course of those conversations.

4 Q. Do you know whether or not anything was
5 addressed toward a point in time where AWWI would hit the
6 break even point and not need the subsidies from the
7 developers when they got to a point where the rates would
8 be revisited?

9 A. To my knowledge, no. But it's also something
10 that I don't think needs to be addressed in this
11 particular rate proceeding.

12 When any utility comes before the
13 Commission and looks for rates, those rates are set using
14 almost a snapshot in time. We look at what the actual
15 expenses of the company have been. Usually a few years
16 worth of history.

17 In the company's filing, they filed with
18 actual test year expenses and adjusted those to a
19 partially projected test period, which is now behind us.
20 That ended in June. And they made adjustments to those
21 actual test year expenses to set their rate. That's
22 where their original \$98 dollar number came from and
23 their subsequent \$88 dollar request in the supplemental
24 testimony.

1 In Delaware, like most states, we don't
2 really do a forward look. We don't try and project out
3 expenses for five, or ten, or fifteen years ahead and set
4 rates on those basis simply because it's speculative.

5 The Delaware Commission and most other
6 Commissions in the United States rely on a fully
7 historical test year and some minor adjustments that are
8 characterized as fixed, known and measurable.

9 If we know that, not in AWTI's case, but
10 in a case that there is a carving unit agreement for
11 labor, we know that next year the labor rates are going
12 to increase because of their contract, most Commissions
13 will allow that type of expense to be recognized between
14 the rates. So, something that has documentation that can
15 be projected.

16 We really want to avoid the situation
17 where we're projecting all of those expenses out for long
18 periods of time because, frankly, we're all not that
19 good. We're likely to make mistakes and be wrong.

20 So, there's a tendency, or a very good
21 reason to rely on fully historical test year to set
22 rates. And that's really what we have done year here.

23 Q. But a test year is like a forward looking?

24 A. No. It's in arrears. The test year is

1 completely behind us. When the rate proceeding is filed,
2 when this proceeding was filed by the company, they had a
3 test year, which was historical, and a test period, which
4 included several months worth of projections.

5 Q. Oh, okay. I was kind of confused. Test year
6 and test period.

7 A. But now the test period is also behind us.
8 That ended in June.

9 MR. KLEIN: Okay. Thank you. No
10 further questions.

11 HEARING EXAMINER LAWRENCE: Any
12 redirect?

13 MS. IORII: Just a couple of redirect,
14 Your Honor. Thank you.

15 (REDIRECT EXAMINATION)

16 BY MS. IORII:

17 Q. Following up on what the Homeowners
18 Association was just asking you about and with respect to
19 the additional revenues from adding new customers going
20 forward, could you explain the matching principle used in
21 rate-making?

22 A. Sure. As I mentioned earlier, what we try to
23 do is set rates as though it were taking a snapshot in
24 time.

1 In doing that, we try to match all of
2 the expenses that the company is likely to incur. That
3 would include its cost of capital. Depreciation. The
4 operating expenses that occur. And, of course, the
5 revenues that are provided under present rates that go
6 along with all of it.

7 So, we're looking for really a bright
8 line in time where we line up all of those expenses and
9 establish a rate based on what exist at that point in
10 time.

11 MS. IORII: Thank you, Mr. Woods. I
12 have nothing further for the witness at this time, Your
13 Honor.

14 HEARING EXAMINER LAWRENCE: Okay.
15 Staff.

16 MS. DONOGHUE: Our case in chief.

17 HEARING EXAMINER LAWRENCE: Would you
18 like to call your first witness.

19 MS. DONOGHUE: I would like to call Dr.
20 Vincent Ikwuagwu and have him sworn in, please.

21 VINCENT IKWUAGWU, having first been duly
22 sworn according to law, was examined and testified as
23 follows:

24 (DIRECT EXAMINATION)

1 BY MS. DONOGHUE:

2 Q. Dr. Ikwuagwu, could you, please, state your
3 full name and speak it for the record?

4 A. My name is Vincent Ikwuagwu. V-I-N-C-E-N-T.
5 I-K-W-U-A-G-W-U.

6 Q. What is your business address?

7 A. 861 Silver Lake Boulevard, Dover, Delaware
8 19901.

9 Q. And by whom are you employed?

10 A. I'm employed by the Delaware Public Service
11 Commission.

12 Q. And as part of that position, are you part of
13 what is considered the Commission Staff?

14 A. Yes.

15 Q. And what is your employment title with the
16 Commission Staff?

17 A. Public Utilities Analyst III.

18 Q. How long have you worked for the Commission
19 Staff?

20 A. I've been with the Staff since December 1990.

21 Q. And as an analyst working here with the
22 Commission and the Commission Staff, can you describe the
23 general nature of your duties?

24 A. My duties include the review of filings of

1 regulated public utilities that propose rate changes and
2 rate revisions.

3 I'm also involved in auditing, analyzing
4 and evaluating and also interpreting fiscal information
5 related to expenditures, operation and administration of
6 assigned regulated public utilities.

7 I also manage rate case filings of
8 various public utilities, including water and wastewater.
9 It is also my duty to plan and participate in audits of
10 regulated companies and in the process prepare
11 testimonies and offer oral testimonies as needed.

12 Q. And in connection with your position with the
13 Commission Staff, were you the case manager on behalf of
14 Staff for this particular docket?

15 A. Yes.

16 Q. And did you perform a review and investigation
17 into this docket?

18 A. Yes, I did.

19 Q. And as part of your duties and
20 responsibilities as the case manager for this particular
21 matter, did you on June 17, 2013 file direct testimony
22 with schedules and exhibits on behalf of the Commission
23 Staff for this docket?

24 A. Yes, I did.

1 Q. I note that your testimony is included as
2 premarked Exhibit 10.

3 Have you reviewed this premarked
4 Exhibit 10?

5 A. Yes, I have.

6 Q. And could you, please, tell the parties
7 whether or not it includes your testimony, exhibits and
8 schedules?

9 A. The premarked Exhibit 10 is the direct
10 testimony that I filed on behalf of the Commission Staff
11 on June 17, 2013, along with seven exhibits and schedules
12 detailing the results of my analysis of AWWI rate
13 revision filing.

14 Q. Did you prepare this direct testimony, the
15 schedules and exhibits by yourself?

16 A. Yes, I did. I also used the assistance of
17 some Commission Staff in formulating my schedules and
18 exhibits.

19 Q. And in regard to your direct testimony only;
20 do you have any changes, modifications or corrections
21 that need to be made at this time in order to make that
22 document true and correct and accurate as of that today's
23 date?

24 A. No. Not at this time.

1 HEARING EXAMINER LAWRENCE: It is
2 Exhibit 9.

3 MS. DONOGHUE: I'm sorry, Your Honor.
4 You are correct.

5 HEARING EXAMINER LAWRENCE: Corrections
6 for Staff were 10, were Exhibit 10.

7 MS. DONOGHUE: I'm sorry, Your Honor.

8 HEARING EXAMINER LAWRENCE: I just
9 wanted to correct it for the record.

10 MS. DONOGHUE: Thank you, Your Honor.

11 BY MS. DONOGHUE:

12 Q. In regard to Exhibit 10, you also filed
13 certain schedules and exhibits.

14 Do you have any changes, modifications
15 or corrections to the exhibits or schedules to your
16 direct testimony in order to make these documents true,
17 correct and accurate as of today's date?

18 A. Not at this time. No.

19 Q. Not at this time, or not at all?

20 A. Not at all.

21 Q. Thank you. Do you adopt your testimony which
22 is prefiled and marked as Exhibit No. 10 as the testimony
23 for this hearing today?

24 A. Yes, I do.

1 Q. As part of Exhibit No. 9, there is also direct
2 testimony of Ms. Amy Woodward, including a schedule and
3 also the direct testimony of Toni Loper, which are also
4 filed and premarked as Exhibit No. 9.

5 Do you adopt the prefiled testimony of
6 Ms. Woodward and Ms. Loper as your own testimony for this
7 hearing today?

8 A. Yes, I do.

9 Q. And do you have any changes, modifications or
10 corrections to either of these documents in order to make
11 them correct, true and accurate as of today?

12 A. No.

13 Q. And if I were to ask you the same questions
14 that were contained in Ms. Woodward or Ms. Loper's direct
15 testimony, would your answers be the same?

16 A. Yes. They would be the same.

17 Q. Dr. Ikwuagwu, have you also reviewed what has
18 been premarked as Exhibit No. 18, the settlement
19 agreement?

20 A. Yes. I have reviewed it.

21 Q. Would you, please, explain going back a bit
22 some of the issues, or the four main issues that I have
23 stated Staff may have had a concern with regarding this
24 case. And summarize, if you can, those four main issues

1 regarding the application and any supplemental testimony
2 that was filed by the company.

3 A. Yes, I will. After review of the case, we
4 found some issues related to the filing.

5 Number one, we had an issue with the
6 calculations made by the company regarding the revenue
7 deficiency and the rate base. We discovered that even if
8 were Staff to accept all numbers listed by the company in
9 and its application and the supplemental application, we
10 could not reach the same result in numbers that the
11 company had.

12 Thus, Staff did not find the \$88 dollars
13 that were filed or requested by the company in their
14 supplemental filing, the EDU, as appropriate and
15 supported by the case.

16 Also, based on our knowledge, we found
17 out the flat rate revenue that was calculated by the
18 company appeared to be inaccurate. And they did
19 supplemental company with the EDUs revised as 14,016, the
20 flat revenue should have been higher, and Staff made that
21 adjustment and the company has since accepted Staff's
22 numbers in their rebuttal testimony.

23 The other issue that Staff had was the
24 inclusion of cash working capital. Staff did not find it

1 appropriate to include cash working capital in this
2 particular case for a company that bills its customers in
3 advance. Hence, there was no significant lapse between
4 business expenses and collecting its revenue.

5 So, in addition, the company also failed
6 to show any lead-lag study that would support this
7 argument for cash working capital as needed in this case.

8 The other issue we discovered was the
9 issue related to plant in service. The company has yet
10 to provide the final plant in service numbers. That is
11 what Mr. Wood referred to as people around the table have
12 different numbers as the 4.2. We've looked into the
13 final plant numbers as of June 30, 2013.

14 So, in response to Staff's data request,
15 the company has noted that they have the final numbers in
16 plant in service. In fact, the company has failed to
17 support those plant additions equal to \$1.7. The plant
18 addition that they only supported was \$1.7. And that
19 gave us about \$906,000 less than what was projected in
20 their filings.

21 Another issue that Staff has was the
22 issue relating to the ROE, return on equity. This
23 particular Staff, and I believe strongly, that the ROE
24 granted by the PSC is not meant to be guaranteed. It

1 should be an expected or targeted return based upon
2 anticipated operating conditions.

3 It assumes that the company is operating
4 efficiently, that way an inefficient company is not
5 rewarded with outlandish rates.

6 The Staff believes that the rate of
7 return on equity determination is not an extra science
8 and the onus is on each company to make its case for an
9 appropriate ROE.

10 AWWMI has not provided any rationale,
11 based on our analysis, any rationale for its requested
12 ten percent ROE, other than we want it because the other
13 guys have it.

14 Staff believes this is unacceptable for
15 a company whose parent is Artesian Resources has been in
16 business over 100 years.

17 The last issue that Staff found with the
18 review was the proposed revisions to its tariff for this
19 application. The company listed certain proposed tariff
20 changes that Staff believes are either discriminatory or
21 unlawful to implement. Hence, Staff opposed to certain
22 of those proposed tariff revisions.

23 Q. Dr. Ikwuagwu, were you involved at all in the
24 negotiations on behalf of the Commission Staff that lead

1 to the settlement agreement that was reached between the
2 parties and which has been premarked and entered into
3 evidence as Exhibit 18 in this case?

4 A. Not directly. But I have read and reviewed
5 it.

6 Q. Now, given your explanation of the several
7 issues that Staff had with the application and including
8 the supplemental testimony that revised the application,
9 could you, please, explain how the proposed settlement
10 agreement addresses each of the issues that Staff found
11 with respect to this filing?

12 A. First, on the calculation of the EDU rate,
13 Staff believes that so long as the plant in service
14 numbers are confirmed by an audit, the rate of \$80
15 dollars per EDU for the first year and \$85 dollars per
16 EDU for the second year allowed the company to be
17 compensated for its actual expenses and for a fair rate
18 of return.

19 Secondly, regarding the including of
20 cash working capital, Staff agreed to settle on a
21 blackbox rate per EDU to resolve the issue.

22 Thirdly, regarding the company's plant
23 in service, Staff will follow with an audit, but will
24 accept for the purposes this settlement, only the numbers

1 given by the company in the application, in fact, that is
2 in existence, that is used and useful, and it should be
3 subject to final audit by Staff.

4 Finally, the proposed settlement
5 agreement provides that the proposed tariff changes are
6 being removed from this docket and will be addressed in a
7 separate proceeding dealing with consolidation of billing
8 in PSC Docket 13-242T.

9 Hence, Staff is satisfied that for the
10 purpose of this settlement agreement between the parties,
11 the tariff issues have been resolved.

12 Q. Dr. Ikwuagwu, is it Staff's position that the
13 proposed settlement agreement results in just and
14 reasonable rates and is in the public interest?

15 A. Yes. I think any time there is a settlement,
16 it always saves additional regulatory and rate expense.

17 Q. Well, Dr. Ikwuagwu, sorry to interrupt you.

18 But do you believe that Staff's position
19 is that this particular settlement agreement results in
20 just and reasonable rates and is in the public interest?
21 Yes or no.

22 A. I would say yes.

23 Q. Could you explain why Staff has that
24 particular position?

1 A. I believe that any time that there is a
2 settlement, it saves additional regulatory and rate case
3 expense, which, if we do not avoid, will end up being
4 passed back to the ratepayers.

5 Staff believes that the proposed
6 settlement results in just and reasonable rates because
7 we believe find the \$80 dollars for the first year and
8 \$85 dollars for the second year is consistent with
9 protecting the customers from reasonable rates and still
10 allowing the company to recoup its business and to earn a
11 reasonable rate of return on its investment.

12 Q. And does this proposed settlement agreement
13 also address the issues that Staff found with the
14 proposed tariff provision changes?

15 A. Yes, it does.

16 Q. And, therefore, given the issues and the
17 gravity that Staff found with these certain four main
18 issues, do you believe this particular settlement
19 agreement is going to be in the public interest?

20 A. Yes. I believe so.

21 MS. DONOGHUE: Thank you.

22 Dr. Ikwuagwu is available for any cross
23 examination, Your Honor.

24 HEARING EXAMINER LAWRENCE: Company.

1 MR. SCHREPPLER: The company has no
2 cross examination for Dr. Ikwuagwu.

3 HEARING EXAMINER LAWRENCE: DPA.

4 MS. IORII: We have just a few
5 questions, Your Honor.

6 (CROSS EXAMINATION)

7 BY MS. IORII:

8 Q. Dr. Ikwuagwu, you testified today you had no
9 changes to your schedules?

10 A. Yes.

11 Q. You are aware that the parties were told you
12 did have changes to make to your schedule?

13 A. Yes, I was.

14 Q. Since that time, did you conclude that your
15 schedules were filed and correct?

16 A. What happened in the process, when we were
17 proceeding toward a litigated hearing, Staff felt that it
18 would be necessary to make certain adjustments relating
19 to Schedule VOI Exhibit 2E, which is the cash working
20 capital, to recognize the present level of O&M as based
21 on Staff's audit.

22 And also to recognize that Staff was not
23 going to allow the inclusion of cash working capital.

24 Staff also wanted to adjust VOI

1 Scheduled 2C, which is the accumulated depreciation to
2 reflect the level of plant that Staff found.

3 But because we were proceeding toward
4 this settlement hearing, I felt strongly that it was
5 appropriate to leave the schedules as they were.

6 Q. You testified about your calculated return on
7 equity.

8 Has the methodology that you used to
9 calculate the proposed return on equity in this case ever
10 been used by this Commission?

11 A. No.

12 Q. Were you involved in the audit of AWMI's books
13 and records in connection with this case?

14 A. Yes, I was.

15 Q. Could you describe for The Hearing Examiner
16 what that audit entailed?

17 A. We used our audit procedure, and that is first
18 to certify that the test year numbers were accurate
19 because they were operating numbers. And after that, we
20 looked at the plant additions, looked at the retirements
21 and then come out with the current rate base. And then
22 we reviewed the O&M that the company is claiming and
23 review all different aspects of the rate case filing.
24 And we were, therefore, there for three days, and we were

1 able to get information that looked at those areas.

2 Q. And what type of documents do you look at
3 during your audit?

4 A. We look at the general ledger. We look at the
5 work orders. We look at those things that were done. We
6 look at the invoices of expenses that the company is
7 claiming.

8 MS. IORII: Thank you. I have no
9 further questions, Your Honor.

10 HEARING EXAMINER LAWRENCE: Intervenor,
11 do you have any questions?

12 MR. KLEIN: I have one or two questions.
13 It is going to be very short.

14 QUESTIONING BY MR. KLEIN:

15 Q. Dr. Ikwuagwu, you audited the books of AWMI?

16 A. Yes, I did.

17 Q. Did you, per chance, look at the books of any
18 of the non-regulated utilities under the Artesian
19 Resources corporation label?

20 A. No. I did not. They are not part of the
21 case.

22 Q. So, you only saw the Artesian Wastewater
23 Management end. You didn't see anything as far as the
24 other end the Artesian Development Corporation?

1 A. The case was actually filed by Artesian
2 Wastewater. So, the books that were presented to us were
3 specific to the wastewater.

4 MR. KLEIN: That was my only question.
5 Thank you.

6 HEARING EXAMINER LAWRENCE: Any redirect
7 by Staff?

8 MS. DONOGHUE: No, Your Honor.

9 HEARING EXAMINER LAWRENCE: Let's take a
10 ten-minute break. The parties have some exhibits that
11 they need to review. And when we return, the Intervenor
12 can present his testimony.

13 (Off the record at, approximately, 11:20
14 a.m.)

15 (Back on the record at, approximately,
16 11:35 a.m.)

17 HEARING EXAMINER LAWRENCE: We're back
18 on the record.

19 You're going to make a presentation, I
20 assume, because you don't have an attorney here? You are
21 going to make a presentation. Right?

22 MR. KLEIN: Correct.

23 HEARING EXAMINER LAWRENCE: You can
24 begin.

1 HOWARD KLEIN, having first been duly
2 sworn according to law, was examined and testified as
3 follows:

4 MR. KLEIN: It has always been the
5 contention of the Stonewater Creek Homeowners Association
6 that you cannot separate Artesian Wastewater Management
7 from Artesian Resources Corporation.

8 Artesian Resources Corporation is not
9 just a holding company. It is a parent holding company.
10 A parent holding company by definition is a holding
11 company that has 80 percent or more of the controlling
12 stock of the companies under it.

13 Everything that Artesian Wastewater
14 Management does is controlled by Artesian Resources
15 Corporation. Period. Basically, it is irrefutable.

16 The fact that Artesian Resources
17 Corporation has regulated, unregulated subsidiaries that
18 interact with one another labilized financially the stock
19 for Artesian Resources Corporation is, basically, the
20 same stock as Artesian Wastewater Management.

21 Artesian Wastewater Management has no
22 publicly traded stock. It falls under the publicly
23 traded stock of Artesian Resources Corporation. And
24 that's why we have the stock documents. And these stock

1 documents that everybody seems to be objecting to are
2 not, basically, hearsay. These are actual numbers from
3 agencies like Thompson Reuters, Ameri Trade, news
4 agencies like Forbes and so on and so forth.

5 So, it is not hearsay. This stuff is
6 traded on the New York Stock Exchange floors, and these
7 are the numbers. Period. No hearsay.

8 Artesian Resources Corporation is a
9 profitable company.

10 In 2011, it had earnings per share of
11 \$0.83.

12 In 2012, which was the last year, it had
13 earnings per share of \$1.13.

14 MR. SCHREPPLER: Your Honor, I'm just
15 going to note an objection to relevance.

16 I understand the exercise we're going
17 through and don't expect you to stop him from testifying,
18 but I'm noting that objection to relevance. Same
19 objection to the documents.

20 HEARING EXAMINER LAWRENCE: Okay.
21 Overruled for now. Please continue.

22 MR. KLEIN: Okay. The market
23 capitalizations of this company is in the vicinity of
24 \$198 million dollars based on stock price as I believe it

1 was last Friday.

2 Artesian Resources Corporation decided
3 to start up the Artesian Wastewater Management Company.
4 This is a privately held company. It got caught,
5 unfortunately, in a really bad time because everybody is
6 aware of what happened in the fall of 2007. The bottom
7 fell out of the financial market. The bottom fell out of
8 the housing market. And its expansion didn't go as
9 planned.

10 The problem that we have is the Artesian
11 Resources Corporation's stockholders are the ones who
12 should be at risk for losing corporation money due to bad
13 financial judgment or getting caught in bad times, not
14 the ratepayer. The ratepayer is locked in. The
15 ratepayer had nothing to do with any of the contracts
16 with the developers. The ratepayer had nothing to do
17 with the subsidiaries that are being paid. The ratepayer
18 has nothing to do with late payments by developers. The
19 ratepayer is responsible for the rate. It pays for
20 service. That's what we pay for.

21 Stock analyst are people who, for a
22 living, try to predict how a stock is going to do. They
23 will take a look at the company. They will analyze the
24 assets, the management, the market of its competitors and

1 so on and so forth.

2 And Artesian Resources Corporation is,
3 basically, a corporation that is operating at a profit.
4 It is paying a dividend that is higher than all of its
5 competitors. It has increased its dividend two years in
6 a row. Two-and-a-half percent last year. Another
7 percent-and-a-half this year.

8 Now, that dividend is, basically,
9 operating capital. If the company is saying that it is
10 losing money, and of the market capitalization over
11 \$4 million dollars, according to Mr. Valcarenghi's
12 testimony over, over \$4 million dollars of that
13 capitalization belongs to Artesian Wastewater Management.

14 The cash flow problems that the company
15 has should be covered by the stockholders on that
16 \$4 million plus. Why does the ratepayer get nailed?

17 I mean, right is right. The ratepayer,
18 in this whole case, is the victim. The ratepayer has
19 been excluded. The ratepayer, basically, is not going to
20 have much say in what happens in these proceedings. This
21 is a deal between the government and the company.

22 HEARING EXAMINER LAWRENCE: Let me ask
23 you a question about that because you referred to that in
24 your opening statement.

1 Now, the homeowners association was
2 granted the right to intervene in this case.

3 Right?

4 MR. KLEIN: Yes, sir.

5 HEARING EXAMINER LAWRENCE: And if you
6 take my word for it, in Maryland that never would have
7 occurred.

8 You have participated fully in these
9 proceedings, haven't you?

10 MR. KLEIN: As far as the court
11 proceedings go I have. But if you remember in the very
12 beginning, the Staff of the Public Service Commission and
13 Artesian itself tried to keep us from intervening. I had
14 to go to my community and get 300 names on a petition and
15 present it to you, Your Honor, to allow us to come in.

16 HEARING EXAMINER LAWRENCE: Right. But
17 my recollection about that issue is that Staff's Counsel
18 correctly pointed out that you were not accurate about
19 who you were representing in your first petition, which
20 was just an innocent mistake on behalf of yourself. Then
21 it was clarified through the by pretty complex legal
22 documents that you were representing the Class A members
23 of the association.

24 Staff's Counsel pointed that out. You

1 amended the petition and included the owners that were
2 the Class A members of the association, 300 members. And
3 you were then granted the right to intervene over no
4 objection from the Staff or from the other parties. That
5 is my recollection.

6 MR. KLEIN: And you are correct.

7 HEARING EXAMINER LAWRENCE: So, then,
8 you were granted the right to intervene. And you fully
9 received all of the discovery that was exchanged between
10 the parties.

11 Correct?

12 MR. KLEIN: That is correct.

13 HEARING EXAMINER LAWRENCE: You were
14 involved with telephone conversations with the parties, I
15 assume.

16 Right?

17 MR. KLEIN: Not really.

18 HEARING EXAMINER LAWRENCE: But your
19 major complaint seems to be something that occurred late
20 last week.

21 MR. KLEIN: Well, my major complaint
22 was, before the July 10th meeting, at the July 10th
23 meeting I found out there was a meeting even before that.
24 I wasn't even aware that any kind of negotiations were

1 going on between the company and the parties.

2 My big objection to this is, there is no
3 input from the ratepayer as far as, Okay, what happens
4 down the road after the build out. What happens down the
5 road when additional income comes in. Not only would the
6 company hit, let's say, the break even point with the
7 rate there is now, but they would start making a profit
8 and an extra percentage over that.

9 Now, the risk of starting a business is
10 not the risk of the ratepayers. It's the risk of the
11 company. It is like bailing General Motors out for bad
12 union contracts. That shouldn't be on the taxpayers
13 back. That's on the stockholder or bond holders.

14 HEARING EXAMINER LAWRENCE: Well, I
15 guess, what I'm asking is, you are here today presenting
16 your objections. So, I'm having a hard time
17 understanding this argument that you've been excluded
18 from the process. You're presenting your objections
19 right now.

20 MR. KLEIN: Well, I should have
21 restated. I've been excluded from the settlement
22 process. That would be the correct terminology.

23 HEARING EXAMINER LAWRENCE: But if you
24 were called about the settlement, you would have said you

1 objected to it.

2 Right?

3 MR. KLEIN: No. If I was called about
4 the settlement, and there were certain numbers that were
5 -- that were moving numbers. Okay. I had originally, in
6 my original testimony, talked about a rate of return of
7 only 7.3 percent.

8 Well, as stock prices move and so on and
9 so forth, rate of returns change. And at this stage of
10 the game, I would be more than willing to give the
11 company ten percent.

12 But I would have structured the
13 settlement a little differently. With this particular
14 settlement, they decided they were going to address the
15 tariff at a later date.

16 Am I correct in that?

17 MR. SPACHT: Some wordsmithing, not the
18 tariff, per se. The rates are set.

19 MR. KLEIN: They weren't going to
20 address the tariff as far as part of this hearing and as
21 part of the settlement. The rates were going to be only
22 part of the settlement that was going to be addressed
23 here.

24 Am I missing something?

1 HEARING EXAMINER LAWRENCE: The parties
2 are agreeing that the tariffs are no longer part of this
3 case, but are part of a different docket that is pending
4 right now.

5 MR. KLEIN: I would say, why go through
6 this twice. Settle it all now.

7 HEARING EXAMINER LAWRENCE: Well,
8 there's a pending docket about one of the major tariffs.

9 But, I guess, what I'm saying is, I view
10 it that you have been provided a full opportunity to air
11 your views, and we are still going through your testimony
12 and all.

13 You would have objected to the
14 settlement anyway. And you are here presenting your
15 objections.

16 Let's just move on from that. Draw your
17 nexus between how these issues with Artesian Resources
18 and Artesian Wastewater should cause a different result
19 from the settlement.

20 Because as Counsel for the DPA pointed
21 out citing the Hope and Bluefield decision, those
22 decisions specifically say that this Commission is
23 required to analyze the particular wastewater entity that
24 filed the rate case.

1 And even in, for example, analyzing the
2 return on equity, there has to be some decision made why
3 a similar wastewater in this jurisdiction received one
4 ROE and why this wastewater entity should not receive the
5 same ROE.

6 So, those decisions were required that
7 the evidence point to this wastewater utility.

8 So, Artesian's umbrella of corporations,
9 regulated or not -- some even in a different state -- how
10 does the profits of this corporation -- specifically what
11 is wrong with the settlement agreement in light of your
12 proposed documents?

13 MR. KLEIN: The point I'm trying to
14 make, once you start mixing the finances of one segment,
15 an unregulated segment of a parent holding company, with
16 a regulated segment of a holding company, it's no longer
17 a separate company. It's one company.

18 And if the argument of the company is
19 that they are losing money, and the parent company is
20 profiting, then the wastewater company is going to also
21 be profitable because what you can do is spin numbers and
22 everybody does it. Everybody here does it when they do
23 their tax returns.

24 I will give you an example. In New York

1 City, I ran a construction company. And it was costing a
2 lot of money to lease equipment. So, I started a leasing
3 company. I was able to do, what the tax laws were in
4 those case with investment tax credits and so on, run the
5 leasing company at a break even point because we were
6 leasing our equipment at cost and move a cost savings
7 into the construction company.

8 So, moving money moving back and forth
9 can make one company look profitable and another part of
10 the company look unprofitable.

11 HEARING EXAMINER LAWRENCE: Artesian
12 needs to certify, is required to certify its financial
13 statements. That is speculation about what may be
14 occurring for this company.

15 What specific proof do you have that
16 anything is going on?

17 MR. KLEIN: That is one of the reasons
18 that I asked Dr. Ikwuagwu, that's one of the reasons I
19 asked him if he was able to look at the books of the
20 parent holding company. Rightfully he said no. Artesian
21 Wastewater Company is what he had to look at. But there
22 is no way that we can tell that this is happening.

23 MS. DONOGHUE: Your Honor, I will just
24 object to that statement.

1 Obviously, this parent holding company
2 is publicly traded. And all of its financial documents
3 are available to the SEC and it has to do filings on a
4 quarterly basis and annual basis. It has to show all of
5 the money that it is getting from its subsidiaries, and
6 this is public information.

7 So, to say that the company might be
8 shifting money between this particular regulated entity
9 and the parent and you don't know if that is happening is
10 not an accurate statement.

11 MR. KLEIN: It actually is an accurate
12 statement. Because the parent company doesn't have to
13 show who it is shifting the money to. All of the parent
14 company has to show is that the money is being spent.

15 HEARING EXAMINER LAWRENCE: The reason
16 that I granted the intervention to the HOA was to give
17 you the right or it the right to conduct discovery as to
18 issues like this if you thought that they were relevant.

19 I'm not going to allow anymore
20 speculation about what's going on at Artesian Resources
21 or any of the other umbrella companies that are under it.
22 To me, it's just speculation. And you've had an
23 opportunity for months, which I gave to you, to specify
24 exactly what is happening out there. I know you

1 conducted discovery into the employees and the percentage
2 of work that the journeyman and the wastewater operators
3 and other people like that do where there has been
4 testimony here today. And you've had an opportunity to
5 conduct discovery about those issues. And there is no
6 evidence at all what has been done in terms of cost
7 shifting is improper.

8 So, I'm not going allow any more
9 testimony about any improper shifting of monies or things
10 like that because, frankly, there is no evidence that any
11 of that has occurred. It's not fair to the company, any
12 of those companies, to impune them that things have
13 occurred when there is no evidence that they have.

14 MR. KLEIN: We're not saying that any
15 illegal activities have occurred. I'm just saying it is
16 normal business practice if you want to make one part of
17 a company look profitable and another part less
18 profitable, you can do that.

19 HEARING EXAMINER LAWRENCE: Specifically
20 how did it occur here? How did Artesian Resources or
21 Artesian Water take that impacted this filing?

22 MR. KLEIN: The Artesian Development
23 Company, I guess, it is, does all of the maintenance work
24 on -- am I correct on that? Which company does the

1 maintenance work?

2 MR. SCHREPPLER: Your Honor, I believe
3 Mr. Spacht's testimony was that Artesian Utility
4 Development Corporation has the employees be operators,
5 licensed operators. And those operators do operate
6 AWWI's wastewater treatment facilities. And they bill
7 their time to that on detailed time sheets. And there
8 has been no accusation by any party, including Mr. Klein,
9 about any specific impropriety at all. This is just Mr.
10 Klein's pure speculation.

11 HEARING EXAMINER LAWRENCE: Let's move
12 onto the next issue, Mr. Klein.

13 MR. KLEIN: Well, you know, basically,
14 if we can't present the financial documents that we have
15 and stock trading documents that we have, there is no
16 sense in the testimony going on.

17 So, I will cease my testimony at this
18 time.

19 HEARING EXAMINER LAWRENCE: Are you
20 waiving the right to introduce these documents?

21 MR. KLEIN: Yes. Because they are not
22 just going to be accepted.

23 HEARING EXAMINER LAWRENCE: Well, do you
24 have any additional proffer that is going to draw a nexus

1 between Artesian Resources and the settlement agreement
2 in this case that will show that the settlement agreement
3 should not be approved.

4 MR. KLEIN: Well, the settlement
5 agreement is not between Artesian Resources and the
6 Public Service Commission. The settlement is between
7 Artesian Wastewater Management and the Public Service
8 Commission.

9 MS. DONOGHUE: Again, Your Honor, I
10 would like to object to the reference to an agreement
11 with the Commission. The Commission Staff has entered
12 into this agreement.

13 MR. KLEIN: The Staff. I'm sorry.

14 HEARING EXAMINER LAWRENCE: Right. It
15 is a proposed settlement agreement. And the Commission
16 itself can only approve it if they find that it's in the
17 public interest.

18 Have you drawn any nexus, or how are you
19 going to draw a nexus between your proffer documents
20 between Artesian Resources and why the settlement
21 agreement is not in the public interest?

22 MR. KLEIN: The best thing I can tell
23 you is this.

24 With the ratepayers, who are the people

1 that are going to pay the bill on this, a lot of them are
2 not in a position to pay the interest. The reason only
3 I'm in here fighting for these people is because a lot of
4 these people are elderly. A lot of them are young people
5 that have either lost their jobs because of bad financial
6 conditions, raising kids and so on and so forth. A lot
7 of them are just living hand to mouth. It's a point of
8 somebody has to fight for these people. To hit them with
9 an increase of, what is the increase now about
10 17 percent, where are they going to get the money from?

11 HEARING EXAMINER LAWRENCE: Does that
12 conclude your testimony?

13 MR. KLEIN: Yes.

14 HEARING EXAMINER LAWRENCE: Did you want
15 to make a point about Exhibit 15, the wastewater services
16 agreement concerning Stonewater Creek? Because none of
17 the parties objected to its admission, and that has to do
18 with a community that is subject to this proposed rate
19 increase.

20 MR. KLEIN: With the community, the
21 company, meaning Artesian Wastewater Management, gets
22 about \$3,800 for every connection it makes to a new
23 house, plus \$100 dollar inspection fee to go out and
24 inspect the connection. They have about 400 more homes

1 that are going to be built in that community. I can
2 foresee at the rate the community is starting to build
3 out, because they are just finished the fifth section,
4 those 400 homes are probably close to completion within
5 three years.

6 There is also going to be another
7 community that is going to have to tie into that
8 wastewater treatment across the road at Pelican Point.
9 And we already have Independence tied into that
10 wastewater treatment plant. And they are paying \$7,000 a
11 home to connect.

12 Now, I don't particularly feel from
13 seeing all of the evidence here these monies are being
14 accounted for in this rate increase. I just don't see
15 it.

16 To increase the rates with no mechanism
17 for decreasing the rates once a build out occurs, I don't
18 think it is fair to the people in these communities. And
19 that's the point I wanted to make.

20 Also, the fact that with Stonewater
21 Creek, the developer put up \$250,000 to help finance the
22 wastewater treatment plant. Now, they are not going to
23 get back, according to that contract, they are not going
24 to get back that \$250,000 for a thousand homes that

1 connected to it. The community is not that big. It was
2 never slated to be 1,000 homes.

3 So, Artesian gets to keep the money. No
4 interest paid on it. Tax free. That's a point that
5 should have been taken into account when they did this
6 rate increase.

7 HEARING EXAMINER LAWRENCE: Did you send
8 any discovery to the company about these issues?

9 MR. KLEIN: Actually, they sent the
10 discovery to me because I got the contract from the
11 company.

12 HEARING EXAMINER LAWRENCE: Is there any
13 evidence about these issues that you want to introduce,
14 the issues that you just talked about, about the
15 deposits?

16 MR. KLEIN: The contract itself, all of
17 the items are highlighted in the contract in the copy
18 that you have.

19 HEARING EXAMINER LAWRENCE: And
20 specifically, your position is that that gives, I guess,
21 when balancing the advantages to AWMi by that contract
22 versus increasing the rate in this case, that the
23 Commission should hold that the ratepayers should not
24 incur a rate increase due to the fact that they can't

1 afford it.

2 Is that what you are saying?

3 MR. KLEIN: That is part of the essence,
4 yes.

5 HEARING EXAMINER LAWRENCE: So, in terms
6 of exhibits, the agreement that is Exhibit 15 will now
7 become Exhibit 12. 12, 13, 14, 16 are not admitted.

8 The proposed settlement agreement will
9 become Exhibit 13 now. And the bill insert will become
10 Exhibit 14.

11 Just for record, I specifically find
12 that the proffer of the four exhibits, 12, 13, 14 and 16
13 was not adequate.

14 I find that the proffer for 15 was
15 adequate, even though the parties agreed that Exhibit 15
16 could be admitted into evidence.

17 Is there any cross examination of the
18 witness by the company?

19 MS. DONOGHUE: Your Honor, I just wanted
20 to interject again, as part of Exhibit 15, there is a
21 document that has been taken out of existence as part of
22 this?

23 HEARING EXAMINER LAWRENCE: I
24 understand. I heard what you were saying. But it sort

1 of gives the history of what occurred at this particular
2 community. So, I erred inside of including more
3 information rather than less.

4 So, any cross examination by the
5 company?

6 MR. SCHREPPLER: Yes. Brief, Your
7 Honor.

8 (CROSS EXAMINATION)

9 BY MR. SCHREPPLER:

10 Q. Mr. Klein, are you presently employed?

11 A. I'm retired.

12 Q. And what was your occupation?

13 A. I had a lot of occupations. I was U.S. Army
14 helicopter pilot for 20 years. I was an electrical
15 contractor in Manhattan. I was a shipwreck and salvage
16 operator from New York to the Joint Tortugas. I was a
17 stock day trader. That's just private not commercially.
18 I operated a real estate company. Also used to do
19 brownstone renovations and sell the brownstones, co-op
20 them. I worn a lot of hats in my life. I'm almost
21 70-years-old.

22 Q. You referred to contributions that Artesian
23 Wastewater Management received from developers in
24 connection with Stonewater?

1 A. Yes.

2 Q. And do you understand that those contributions
3 are not counted in rate base?

4 A. Well, originally, there was a lot of stuff
5 that was in rate base that was taken out. But, no, I do
6 not believe that it is in the rate base.

7 Q. So, monies supplied by the developer to the
8 utility, do you understand that that benefits the
9 ratepayers because the ratepayers don't have to pay for
10 that utility plant?

11 A. I understand that. My point was, Artesian
12 doesn't have to layout all of the money for the
13 infrastructure in these communities. It's done by the
14 developer. And the land is donated by the developer.
15 So, the Artesian cost, I don't believe, are as great as
16 Artesian has made out to be.

17 Q. But don't you understand, sir, that if
18 Artesian did advance all of the capital to build that
19 utility plant, the ratepayers would be asked to pay for
20 that in their rates?

21 A. I understand that.

22 MR. SCHREPPLER: I have nothing further,
23 Your Honor.

24 HEARING EXAMINER LAWRENCE: DPA.

1 MS. IORII: I have a few questions.

2 (CROSS EXAMINATION)

3 BY MS. IORII:

4 Q. Mr. Klein, you described some of the jobs you
5 have held over the course of your career?

6 A. Not jobs that I held. I was the person that
7 built these companies and ran these companies.

8 Q. You're not a wastewater engineer.

9 Is that correct?

10 A. No. Absolutely not.

11 Q. And you've never worked for a State Utility
12 Commission or State Consumer Advocate.

13 Correct?

14 A. The only time I ever worked for the government
15 was for the United States Army.

16 Q. And you don't have any regulatory accounting
17 experience.

18 Correct?

19 A. No. I have business accounting experience,
20 not regulatory.

21 Q. You don't have any regulatory rate-making
22 experience.

23 Correct?

24 A. No.

1 Q. You've never been a rate of return witness in
2 any rate-making proceeding?

3 A. No. Absolutely not. I told you I was a
4 virgin.

5 Q. I'm not going to go there.

6 A. That's my line.

7 Q. You're not familiar with the matching
8 principle of rate-making.

9 Correct?

10 A. No.

11 Q. And you are not familiar with this
12 Commission's rules regarding the use of future test
13 periods?

14 A. No. Test periods were something that was
15 totally new to me. That was part of my virginity break
16 in.

17 Q. And you're not familiar with the rate-making
18 concept of known and measurable changes.

19 Correct?

20 A. That is correct.

21 MS. IORII: I have nothing further.

22 Thank you.

23 HEARING EXAMINER LAWRENCE: Staff.

24 MS. DONOGHUE: Staff has no questions

1 for this witness, Your Honor.

2 HEARING EXAMINER LAWRENCE: Do the
3 parties want to make any closing statements? We can have
4 closing statements if you would like or not.

5 MR. SCHREPPLER: Your Honor, before we
6 do that I would like to recall Mr. Spacht for very brief
7 rebuttal testimony in response to some testimony from Mr.
8 Klein in which he alleged that contributions from
9 developers were not accounted for in this rate case. And
10 I want Mr. Spacht to explain why that's wrong.

11 HEARING EXAMINER LAWRENCE: And also if
12 Mr. Spacht has any knowledge about the bill insert.

13 MR. SCHREPPLER: Very good. Why don't
14 we start with the bill insert.

15 (REDIRECT EXAMINATION)

16 BY MR. SCHREPPLER:

17 Q. Mr. Spacht, when the affected communities were
18 notified about this rate case in a newspaper ad, was one
19 of them inadvertently omitted?

20 A. Yes.

21 Q. Which one?

22 A. The development of Independence.

23 Q. And did Artesian do anything to correct that?

24 A. Yes. In conjunction with the Staff of the

1 PSC, we put together a notice to those customers.

2 Q. And have we provided that to The Hearing
3 Examiner what has now been marked as Exhibit 14?

4 A. We have.

5 MR. SCHREPPLER: Your Honor, we would
6 move that into admission, if that is necessary.

7 HEARING EXAMINER LAWRENCE: It is in
8 evidence because the parties agreed that it was in
9 evidence.

10 MR. SCHREPPLER: All right. Thank you.

11 BY MR. SCHREPPLER:

12 Q. Mr. Spacht, you heard Mr. Klein's testimony
13 just now?

14 A. Yes, I did.

15 Q. Is there something you would like to correct
16 on the record about what he said?

17 A. I just wanted to clarify, all contributions
18 received from developers have been appropriately
19 classified either as a contribution in-aid-of
20 construction, which is deducted from rate base, or as a
21 subsidiary or revenue, which is accounted for on the
22 income statements on the face of the books and presented
23 in this case, both of which serve to reduce the cost to
24 customers and the rates ultimately to customers.

1 As to the thousand customers that Mr.
2 Klein referred to, the thousand customers for that
3 developer not only included those of Stonewater, but its
4 sister development, Pelican Point, which is across the
5 road. It used to be Stonewater II, but it is now
6 renamed.

7 So, there is slated to be under their
8 jurisdiction, approximately, 1,000 homes, just to
9 clarify.

10 Q. And did you hear his testimony about the
11 ability of parent company to move money around to make a
12 subsidiary look more or less profitable?

13 A. I did. I tried not to hear that.

14 We are audited by independent auditors
15 under the SEC rules. We file state tax returns that
16 specifically segregate the operating companies and are
17 required to keep our books and records according to the
18 Uniform Systems of Accounts for regulated utilities and
19 the law that governs all those. There is no shifting
20 between companies to make one profitable or the other or
21 regulated by the folks here that audit books as well.

22 As you heard in this case, Mr. Ikwuagwu
23 audited separately from our independent auditors our
24 books and records to assure that the costs and expenses,

1 revenues are reflected appropriately on those books and
2 records for those subsidiaries are regulated utilities of
3 of Delaware and are audited separately by this
4 Commission.

5 Q. And in this rate application proceeding, has
6 any party challenged any specific transaction between
7 Artesian Wastewater Management and any of its affiliates?

8 A. They have not.

9 MR. SCHREPPLER: Thank you. That's all
10 I have, Your Honor.

11 MR. KLEIN: Can I rebut something?

12 HEARING EXAMINER LAWRENCE: Yes. Hold
13 on one second. I'm just following the order that we have
14 been following.

15 Does the DPA want to cross Mr. Spacht?

16 MS. IORII: No questions.

17 HEARING EXAMINER LAWRENCE: Staff.

18 MS. DONOGHUE: Yes, Your Honor.

19 (RECROSS EXAMINATION)

20 BY MS. DONOGHUE:

21 Q. Mr. Spacht, would be it more accurate that the
22 opening order contained a public notice that was directed
23 to all customers of Artesian Wastewater Management, Inc.,
24 and that the company did publish the notice of the rate

1 increase in accordance with that opening order?

2 A. We did. There were separate developments that
3 were listed there. And what we were referring to is that
4 development --

5 Q. Wouldn't it be more accurate to say that the
6 public notice of the comment session had a list of the
7 developments, and that that particular notice in one of
8 the newspapers did not list the Independence development?

9 A. That's correct.

10 Q. But the opening order did, of course, direct
11 that ratepayers or customers of Artesian Wastewater
12 Management, Inc., were on notice of the proposed rate
13 increase?

14 A. I don't know if the opening order was
15 published. I know that the notice of the public hearing
16 was published.

17 HEARING EXAMINER LAWRENCE: Exhibit 1 is
18 the Affidavits of Publication of the public notices. I'm
19 sorry. The Affidavits of Publication of public notice of
20 the application in The Delaware State News, Delaware Wave
21 and Cape Gazette Newspapers. Notice to all ratepayers
22 was published in the application. Notice of evidentiary
23 hearing, which is Exhibit 3. And what you are referring
24 to is the notice of Public Comment Session, which is

1 Exhibit 2.

2 MS. DONOGHUE: Thank you. No further
3 questions.

4 HEARING EXAMINER LAWRENCE: Okay.
5 Intervenor.

6 (RECROSS EXAMINATION)
7 QUESTIONING BY MR. KLEIN:

8 Q. I have one statement about what you said about
9 tax returns.

10 In the discovery period I had asked for
11 a copy of the federal tax return for Artesian Wastewater
12 Management.

13 And in Mr. Valcarenghi's response, I was
14 told that Artesian does not file federal tax return.
15 Artesian Resources Corporation files their return for the
16 company. But you guys did file state returns, but the
17 only thing that I received was an annual report for three
18 years running to the Delaware State Public Service
19 Commission.

20 So, I was just wondering, do you
21 actually file a state tax return, or is that filed by
22 Artesian Resources Corporation for you?

23 A. No. We file a state tax return. If that
24 wasn't provided, that was an oversight. We do file

1 state. I don't recall that being asked for.

2 But the federal return is a consolidated
3 return. But for state purposes, we recast, according to
4 the books and records, all of the statements for state
5 tax purposes.

6 MR. KLEIN: Thank you.

7 HEARING EXAMINER LAWRENCE: Okay.

8 Before we decide on closings, whether we are going to
9 have closing statements or not, there are a few
10 ratepayers who asked to make public comments here today.
11 And I had sent a message that they would be allowed
12 because the Commission always encourages public comment,
13 even at this late date when it is past the deadline.

14 So, would you gentleman please come up
15 here quickly and just state your name and the community
16 you live in for the record. And within a two-minute time
17 period concisely make your statements.

18 MS. IORII: Your Honor, before we do
19 that, might we decide whether you will allow closing
20 statements or not. Perhaps, we can be working on our
21 closing statements.

22 HEARING EXAMINER LAWRENCE: Okay.

23 Does the company want a closing
24 statement -- wish to make a closing statement?

1 MR. SCHREPPLER: Your Honor, the company
2 does not require a closing statement.

3 HEARING EXAMINER LAWRENCE: DPA.

4 MS. IORII: The DPA would like to make a
5 closing statement. Yes.

6 HEARING EXAMINER LAWRENCE: Staff.

7 MS. DONOGHUE: I don't believe Staff has
8 anything to add.

9 HEARING EXAMINER LAWRENCE: Intervenor.

10 MR. KLEIN: No. I would just like to
11 thank you for the opportunity to speak.

12 HEARING EXAMINER LAWRENCE: Well, I'm
13 going to give anybody who wants to make a closing
14 statement an opportunity to do it right after we take the
15 short public comment.

16 MS. IORII: Thank you, Your Honor.

17 HEARING EXAMINER LAWRENCE: Go ahead,
18 sir.

19 MR. WILSON: My name is Vince Wilson.
20 I'm a resident and ratepayer of the Independence
21 community.

22 AWMI notified Independence residents on
23 June 20th five months after the initial public
24 notification that we were part of the rate increase,

1 proposed rate increase.

2 They also filed, or they used a letter
3 to notify us that they had supplemented the testimony
4 with the PSC in lowering its requested increase, which
5 was to be \$98 dollars to the \$88 dollars.

6 The letter did not say that the
7 reduction was due to Artesian's error and over statement
8 of expenditures that purported to justify the original
9 rate increase.

10 The June 20th letter also omitted
11 Artesian's proposed additional increase to the
12 Independence clubhouse, and I have not heard this
13 discussed in the entire session here, nor in the
14 agreement.

15 But let me just underscore what the
16 significance is of the proposed increase to the
17 Independence clubhouse.

18 Currently, Independence clubhouse pays
19 \$9,000 a year. The proposed increase by Artesian is to
20 raise it to a total of \$32,736, more than triple the
21 current rate.

22 As a ratepayer and as a club member,
23 okay, through Independence, I wind up having a sidedoor
24 increase that comes in to the residents of Independence.

1 Most of the clubhouses all experience
2 increases under this proposal and the supplemental
3 filing, except for Trails of Beaver Creek, which
4 experienced a decrease.

5 But Independence increase is 264 percent
6 annual for the clubhouse, which invariably will be passed
7 on somehow, okay, to the residents of Independence and
8 the users of the clubhouse.

9 So, there is a hidden increase in
10 addition to the agreement, which I'm disappointed with
11 this agreement of a \$10 dollar increase over a two-year
12 period. And I shouldn't say dumbfounded because I tried
13 to drive all of my information from the public record,
14 the testimony given by the different parties. And as a
15 matter of fact, the last part of the public record that
16 I'm aware of is that the PSC Staff and The Public
17 Advocate provided written testimony on June 17th. This
18 was all concerning the charges per EDU, Equivalent
19 Dwelling Unit.

20 The PSC Staff's recommendations ranged
21 from a decrease of \$1.91 per month increase to an
22 increase, excuse me, of \$3.70.

23 And The Public Advocate consultant, Mr.
24 Woods, recommended a monthly increase of \$73 dollars. He

1 has since testified today that through an error of
2 revenues he overstated or understated that and that they
3 were now entitled to an additional \$2.52, I believe it
4 was.

5 And I fail then from a Public Advocate's
6 standpoint the quantum leap from \$2.50 to a range of
7 reduction of \$1.91 to \$3.70 that now everybody seems to
8 be in concert, this quantum leap to \$10 dollars. And
9 that is what we feel, okay, as the ratepayers.

10 So, I thank you very much for the input.
11 This was quite an education from someone who is not used
12 to this type of arrangement. But I certainly would
13 welcome to see what becomes part of the public record
14 where the quantum leaps were made by the two recommending
15 parties to the Commissioners from several dollars
16 increase on average, between the two to ten dollar rate.
17 It's split over two years. I understand that. But the
18 fact of the matter is, it's a ten dollar rate going
19 forward to us, the ratepayers.

20 So, with that, I thank you. I thank you
21 for the opportunity to speak. And I know there are a
22 couple of the other parties that have maybe a couple of
23 things they are want to go and say.

24 HEARING EXAMINER LAWRENCE: Thank you.

1 MR. "O'WEAVER:" Good afternoon. My
2 name is Bill "O'Weaver." (Phonetic.) I also am a
3 resident of Independence. I came in here with prepared
4 remarks hoping I would be able to say them. And I do
5 appreciate the opportunity to speak. I have some
6 prepared remarks given everything that has happened.

7 Let me follow up Mr. Wilson's comments
8 concerning the re-rating of the clubhouses.

9 The increase which is now a little bit
10 less given the agreement among all of the parties, but,
11 nevertheless, the increase to the Independence clubhouse
12 comes out to about, on an annualized basis, remember,
13 this increase took place from January 18, 2013 to May 31,
14 2013. It was four-and-a-half months. It wasn't over six
15 years. \$9,000 was fine. January 13th. Suddenly,
16 May 31st, it goes to 32 thousand dollars plus, nearly a
17 \$24,000 dollar increase.

18 That on an annualized basis is about 400
19 times CPI. Somebody explain to me how a customer getting
20 hit with an increase 400 times CPI is in the public
21 interest. Obviously, what the re-rating of the
22 clubhouses has also done is that it has spread out the
23 increase.

24 The January 18th application, there were

1 13,608 EDUs.

2 The May 31st reapplication, or
3 amendment, whatever it's called, 14,016 EDUs.

4 Point of fact, if you maintain the same
5 EDU count to compare apples to apples, the ten dollars
6 that everybody is patting themselves on the back, that
7 they agreed to is in the public good, is actually more
8 like \$12.50.

9 So, let's take that into account. There
10 has been nothing that I seen in any of the testimony, and
11 I'm sure I missed some of it, and I'm sure there is a
12 whole bunch of it here I won't be able to see being a
13 member of the public, but I have never seen anybody take
14 into account the impact of the increases in the
15 clubhouse. They get spread out to the communities as
16 well.

17 So, I think that's something that has
18 not been addressed and really needs to be addressed taken
19 before everybody signs on and has a party over this
20 blackbox agreement, whatever in God's name that is.

21 The other thing about this whole process
22 from the beginning, Artesian's application and its
23 testimony has been filled with errors. Let me give you a
24 couple of -- I don't know if you want to call it high

1 points or low points.

2 The application of January 18, 2013,
3 Section III, AWWI request the Commission grant or approve
4 an increase of \$342.608 in flat rate revenues.

5 Do you want to know what that comes out
6 to per EDU? \$25.17. Yet, they also requested an
7 increase of \$23 per EDU. How do you put those two
8 together?

9 So, clearly an error, which, by the way,
10 was filed in the 10Q. So, that is an inadvertent number
11 that is there as well.

12 There were several other errors that
13 were made. Exhibit 3, Schedule 3A, Page 2 of Mr.
14 Valcarenghi's testimony, and I apologize if I
15 mispronounce the name. The annualized revenues from the
16 customers at the test year was understated by about
17 \$35,000, which was also pointed out in Mr. Woods'
18 testimony of, I believe, June 17th because that same
19 error was not corrected in the May 31st testimony.

20 Exhibit 1, Schedule 3, Page 3, still the
21 January 18th testimony of Mr. Valcarenghi's, under the
22 present rate's calculations, the revenue adjustments, the
23 reviews were incorrect, as well as the income tax
24 calculations, operating income, rate of return. The

1 adjustments follow the errors in flat rate revenues,
2 miscellaneous revenues, O&M expense, income tax
3 calculation and operating income. We got a lot of really
4 good credibility going on here.

5 Now, you have asked Mr. Klein a number
6 of times to draw a nexus between Artesian Resources and
7 Artesian Wastewater Management, Inc. Well, it's actually
8 a pretty simple nexus, I think. Because based on the
9 history of Artesian as a ratepayer, they have been paying
10 dividends since 1931, and recently they have had a very
11 stellar record. I should be a shareholder, not a
12 ratepayer. 75 percent round numbers in the last ten
13 years of net income has gone to shareholders. Cash
14 dividends to shareholders.

15 It's very logical to draw out the nexus,
16 if you will, that ten dollars only \$1.50 will go actually
17 into AWWMI. The vast majority of that will go first to
18 the shareholders, secondly, tax expense.

19 So, the ten dollars additional that each
20 of us ratepayers are going to pay \$1.50 is going into the
21 company. So, whatever you recommend to the Commission,
22 please keep in mind you haven't addressed at all the
23 issue of the increased EDUs, which have caused egregious
24 increases in virtually all of the clubhouses.

1 Actually, it's kind of interesting. All
2 of the clubhouses, increase, increase, increase, increase
3 and then decrease. Again, this is all over
4 four-and-a-half months. This is not over six years.
5 Four-and-a-half months. The one, there was a decrease.
6 You would almost think a politician lived there.

7 So, I really hope you take into account
8 the fact that ten dollars is not ten dollars. When is
9 ten dollars not ten dollars when it is this rate case.
10 It is equivalent of \$12.50. Thank you.

11 HEARING EXAMINER LAWRENCE: Okay. Next
12 comment.

13 MR. BLOOM: Thank you, Your Honor, for
14 allowing me to take a few minutes to present my thoughts.

15 My name is Martin Bloom. I also am a
16 homeowner at Independence community. I really have no
17 one to represent me other than a Public Advocate. And
18 the over this period of these hearings, we had one
19 Advocate who was representing us stepped down. I believe
20 we recently had appointed a new Advocate. I'm not really
21 sure who is really representing the homeowner who is
22 carrying the rate and the burden of whatever increase is
23 allowed or approved.

24 It seems to me that the rate increase

1 and request that is being made is very fluent. It is not
2 based on actual operating course that they can present.
3 But rather now, I understand in a compromise, a blackbox.
4 Blackbox not specific in detail, but just saying whoever
5 they came to this.

6 I, as a rate owner, or as a customer,
7 carrying the burden, have never been privileged to any
8 opportunity to discovery, to being a part of these
9 hearings, they're private, they're closed, or whatever,
10 and then comes out and then a rate increase of whatever
11 was determined in our best interest.

12 Now, I'm a city boy. But if I was a
13 farmer, I would be inclined to say that there seems to be
14 a pig in the pen and something is not kosher. It just
15 doesn't seem to make sense you can go from a decreases
16 under the study to maybe a slight increase to minimum
17 increase to all of a sudden a five dollar or ten dollar
18 increase lowering it from an initial request of \$23
19 dollars to maybe \$13 dollars and then increasing
20 somewhere else in the clubhouse.

21 My last two points I would like to say,
22 sir, is that, Artesian chooses to increase their revenue
23 through the waterway subsidiary. And the reason being
24 because waterwaste is a true monopoly, or if nothing else

1 a goodly gobbly.

2 If Artesian rates water rates many
3 customers would opt for a wellness supply water for
4 irrigation, thus offsetting an increase in water usage.
5 They have that option.

6 But the sewer's wastewater have no
7 alternative option like the water, unless you are allowed
8 to put in your own septic system, which is not going to
9 happen because a developer went into an arrangement with
10 wastewater management, not us.

11 Secondly, the ratepayers depend on the
12 PSC and Public Advocate provide oversight by regulating
13 private utilities such as us. That oversight should
14 extend to assurance that Artesian obtains a balance
15 between a rate increase and cost cutting measures in
16 pursuit of a ten percent ROE.

17 Currently, the ratepayers shoulder the
18 entire burden of Artesian's demand of a high rate of
19 return. We feel that an extremely high ROE should be
20 earned not achieved solely through rate increases.

21 Thank you very much for the opportunity
22 to speak, sir.

23 HEARING EXAMINER LAWRENCE: Any more
24 comments? Okay.

1 Do you want to respond, Mr. Schreppler?

2 MR. SCHREPPLER: Your Honor, would it
3 help you for Mr. Spacht to explain re-rating the
4 clubhouse usage of wastewater services.

5 HEARING EXAMINER LAWRENCE: Absolutely.

6 And another issue that I'm interested in
7 is that in the original filing it said industrial
8 customers would be charged a monthly monitoring and
9 testing fee equal to actual cost, plus a 15 percent
10 overhead charge.

11 And I wanted to know how this settlement
12 agreement impacts Mr. Wilson's comments and the others
13 comments about the clubhouse and also that particular
14 provision from the original application.

15 MR. SCHREPPLER: All right.

16 (REDIRECT EXAMINATION)

17 BY MR. SCHREPPLER:

18 Q. Mr. Spacht, would you address both of those
19 things?

20 A. Okay. The re-rating of the clubhouse first.

21 Before filing supplemental, internally
22 we are responsible to DNREC to have facilities built to a
23 certain size and to charge people their usage of that
24 system.

1 When it comes to the clubhouses when
2 originally built and until enough customers are in there,
3 there is no usage, there is very little usage, and we
4 went, at the opening of those clubhouses, upon usage.

5 We were corrected by regulators, that
6 being DNREC, not PSC, we had to rate those clubhouses as
7 if they were going to be used, peak use, because that is
8 what the wastewater systems would take.

9 So, we went through and did our ratings
10 based upon the DNREC standards and re-rated all of the
11 clubhouses to make sure they were being charged the
12 appropriate rate and then other customers that didn't
13 have use of those clubhouses were not charged for the
14 EDUs associated with them. So, they were related.
15 Notices were sent out.

16 The effect of those revenues were
17 included in the supplemental filing which gave rise to
18 the decrease in the requested revenue adjusted. That is
19 the clubhouse.

20 Q. Well, let me ask you something else about
21 that.

22 The clubhouse at Independence, are you
23 familiar with it?

24 A. I am.

1 Q. And is it fair to characterize it as a banquet
2 facility?

3 A. It has been used for a number of occasions
4 that are rather large venues that they would use for
5 banquets and other events.

6 Q. And are you aware that it generates revenue
7 from that usage?

8 A. I don't know first hand. But I've been told
9 that it does.

10 Q. Can you address the second point that The
11 Hearing Examiner asked?

12 A. Yes. We are also required to inspect the
13 permits to industrial customers separate and apart from
14 normal operations. And what we have in the tariff now
15 are the fees associated with doing that specific task.
16 And that is also required by our DNREC's permits. So, we
17 have included that in the tariff so we can charge that
18 back to the specific customer when and if that happens.

19 Q. Is there something that we need to do in the
20 settlement agreement that addresses that?

21 A. I don't think so. It is what it is. Cost
22 plus override. It doesn't have anything to do with the
23 EDU counts. When and if it happens, we have the ability
24 to charge them for it. We don't have industrial

1 customers right now. So, that is not an issue. But we
2 could because it includes things like restaurants, large
3 restaurants, things like that, that would have the sorts
4 of monitoring that you need. We don't have those right
5 now.

6 MR. SCHREPPLER: Thank you.

7 HEARING EXAMINER LAWRENCE: Any cross of
8 Mr. Spacht by DPA?

9 MS. IORII: I have one question.

10 (RE CROSS EXAMINATION)

11 BY MS. IORII:

12 Q. The clubhouse facility that is receiving a
13 decrease, could you explain why that is?

14 A. Again, based upon the standard specs that
15 DNREC provides, you measure the types of facilities that
16 they have. Do they have a kitchen. How many bathrooms.
17 How many showers. Does it have a pool. There are all
18 sorts of different criteria that they used to add up the
19 EDU. In that case, they had less than what was
20 originally anticipated.

21 Q. And would it be fair to say that the rate that
22 was in a sense overcharging for that facility?

23 A. Under the standard that we have --

24 Q. DNREC had required before?

1 A. Well, I would not say that they were
2 overcharging. We were using it for the use at that time.
3 When we re-rated it, we had to decrease it. So, we used
4 it the initial use, for whatever reason, it appeared they
5 were using more. Their consumption or use, rather, it is
6 not consumption, it is service, has decreased over time,
7 and it is more based upon the facility itself.

8 MS. IORII: Thank you.

9 HEARING EXAMINER LAWRENCE: Any cross by
10 Staff?

11 MS. DONOGHUE: Yes, Your Honor.

12 (RECROSS EXAMINATION)

13 BY MS. DONOGHUE:

14 Q. Mr. Spacht, I believe it's Staff's
15 understanding of the settlement agreement is that the
16 only change made to the proposed tariff that would go
17 along with whatever is presented to the Commission would
18 be the changes in the EDU rates going to 80 for the first
19 year and 85 for the second year.

20 Am I correct in my conclusion that you
21 will still, as a company, file a tariff change which
22 would include the industrial customers charge in the
23 separate docket?

24 A. That is correct.

1 MS. DONOGHUE: Thank you. No further
2 questions.

3 HEARING EXAMINER LAWRENCE: Intervenor.

4 QUESTIONING BY MR. KLEIN:

5 Q. I have one question.

6 As far as this clubhouse rate change,
7 Stonewater Creek, as far as I know, has never been
8 notified of any separate charge for the clubhouse or
9 increase in the clubhouse.

10 When did this go out and how?

11 A. If they didn't receive one, it wasn't
12 re-rated. This is only where we had to go back and
13 re-rate the clubhouses based upon specific criteria. Not
14 everybody received the same thing so I can't speak to
15 anyone specifically. But we are happy to check into
16 that, though.

17 MR. KLEIN: Thank you.

18 HEARING EXAMINER LAWRENCE: Any
19 redirect, Mr. Schreppler?

20 MR. SCHREPPLER: No, Your Honor.

21 MR. BLOOM: I have one question, Your
22 Honor.

23 HEARING EXAMINER LAWRENCE: Quickly.

24 MR. BLOOM: The increase in clubhouses,

1 I think we used the term, which had a significant one,
2 that was not based on actual usage, but based on some
3 sort of rate, formula, whatever.

4 Is that correct?

5 MR. SPACHT: There are specific criteria
6 by which they determine what the use of the clubhouses
7 can be. And there has been peaking at Independence that
8 is not sustained, but they look at the peak day flow from
9 the clubhouses. And there have been circumstances where
10 the flow on a peak day is high.

11 MR. BLOOM: On a peak day. Again, it is
12 not based on actual usage, but on a formula.

13 Correct?

14 MR. SPACHT: The EDUs are based upon a
15 formula that is required. Yes.

16 MR. BLOOM: So, an increase of
17 approximately 400 percent or whatever that specifically
18 is going to be based, you feel is based more on usage by
19 outsiders, not homeowners, in Independence because it is
20 rented out or whatever.

21 Is that what your final analysis came to
22 for the increase?

23 MR. SPACHT: The clubhouse is owned by
24 the homeowners association that --

1 MR. BLOOM: That's not the --

2 MR. SPACHT: The developer. Well,
3 whoever is paying the bill for the clubhouse is flitting
4 the bill for the EDUs associated with that clubhouse.
5 And whoever is using it is generating a flow to our
6 wastewater facility that requires our wastewater
7 facilities to be sized to such an extent that they are
8 covering that cost.

9 MR. BLOOM: And I guess --

10 MS. DONOGHUE: Your Honor, I have to
11 object.

12 MR. BLOOM: I apologize. You came to
13 the conclusion that it's about 400 times more than it is
14 in the past before you made the changes.

15 MR. SPACHT: There was a letter sent out
16 that explains how it was calculated. I don't have that
17 in front of me. I don't know what the numbers are.

18 MR. BLOOM: I appreciate it, sir.

19 HEARING EXAMINER LAWRENCE: Closing
20 statements.

21 Can we begin with you, Ms. Iorii?

22 MS. IORII: Yes, thank you.

23 Mr. Klein stated during his testimony
24 that Artesian Resources controls everything that AWMI

1 does and that once they are combined, it is one company.

2 As a matter of corporate law, that's an
3 incorrect statement. Subsidiaries and affiliates are
4 considered separate entities from the tariff company.
5 And that's why under corporate law, to get to a parent
6 company, a shareholder has to get a court to pierce the
7 corporate veil.

8 And that is also why this Commission is
9 bound by United States Supreme Court while to set rates
10 for AWWI, not ARC. That means that AWWI is treated as a
11 standard-alone company for purposes of setting rates.

12 As an example, Delaware Power is a
13 wholly owned subsidiary of PEPCO Holdings, Inc and
14 Delmarva is not publicly traded. But when this
15 Commission sets rate for Delmarva Power, it sets them
16 based on Delmarva Power as a stand-alone entity.

17 The Commission has consistently rebuts
18 The Public Advocate's efforts to obtain a consolidated
19 tax adjustment. PHI hasn't paid a federal income taxes
20 for years. And The Public Advocate's position has been
21 that ratepayers should get the benefit of that
22 non-payment of taxes.

23 But the Commission has consistently
24 rejected this position and treated Delmarva as a

1 stand-alone utility.

2 The homeowners association also says
3 that no one has taken the ratepayers' side on this
4 because no one has considered the additional revenue that
5 AWWI will get for customers that it will add.

6 Now, I understand Mr. Klein doesn't have
7 any rate-making experience or the precedence that this
8 Commission must follow.

9 First I do note that in this case the
10 company did include an additional 110 customers over and
11 above the number of customers it certainly serves.

12 Second, the homeowners association
13 doesn't understand the concept of known and measurable
14 changes or the matching principle.

15 We're sympathetic to the additional
16 expense that this rate increase will create. But we
17 expect that customers want wastewater service, too. And
18 the unfortunate fact is that service cost money.

19 With respect to decreasing rates, if
20 build out occurs, Staff receives regular reports from
21 every utility that it regulates. And if the company is
22 over earning, Staff or the DPA can bring a Section 310
23 action to reduce rates. And also with a greater number
24 of customers comes a greater amount of expense.

1 Finally, I take offense, and I speak
2 only as myself as Counsel for The Public Advocate, I take
3 offense that the suggestion that The Public Advocate has
4 not represented ratepayers in this case.

5 There have been repeated references to
6 the testimony of Staff and to Mr. Woods' prefiled
7 testimony. But what people need to understand is that
8 testimony is only a recommendation. You, The Hearing
9 Examiner, can reach a different conclusion as to
10 contested issues and the Public Service Commission itself
11 could reach a different conclusion as well. And if The
12 Hearing Examiner and then later the Commission does not
13 agree with the positions that we took, then the rate is
14 going to be higher than what The Public Advocate
15 recommended.

16 The Public Advocate has balanced his
17 concerns for the impact of the rate increase against not
18 only the harm to the community that could result if they
19 don't have adequate wastewater service. I don't know
20 whether any of the people here are familiar with Heron
21 Creek or Lea Era Farms, but those are two great examples
22 of what can happen when a wastewater utility doesn't get
23 enough money to be able to provide the adequate service.

24 I understand that reasonable minds can

1 differ regarding the conclusion that we reached, but it
2 is not the case that The Public Advocate has not
3 adequately represented the ratepayers or that he is not
4 concerned with the ratepayers' well being.

5 Thank you, Your Honor.

6 HEARING EXAMINER LAWRENCE: The company.

7 MR. SCHREPPLER: Your Honor, I find
8 myself in the rare occasion of agreeing with everything
9 that Ms. Iorii just said.

10 MS. IORII: This is being recorded.
11 Right.

12 MR. SCHREPPLER: I also want to assure
13 people that the process has been open. There was no
14 effort to include anyone, especially Mr. Klein.

15 When the parties resumed negotiating
16 Thursday evening and Friday morning on the telephone, it
17 just made sense to first see if there was any possible
18 common ground between the company and the professionals
19 that Staff and The Public Advocate and the witness that
20 the consultant that the Advocate retained, because if
21 there was no common ground there, no there was no sense
22 trying to negotiate with the homeowners association.

23 And as soon as we did reach that common
24 ground, I understand Staff reached out and left a voice

1 mail for Mr. Klein, and then, I sent an E-mail to
2 everyone, including Mr. Klein Friday afternoon where I
3 took great effort to explain the process that would go on
4 today and in the future with your recommendation, report
5 and then matters going to the Commission and possibly
6 even the Superior Court on appeal.

7 Because I wanted Mr. Klein and people
8 who are getting information from him to know that there
9 is an abundance of due process in this room and with this
10 Commission and Staff.

11 I will conclude with that, Your Honor.

12 HEARING EXAMINER LAWRENCE: Staff. Do
13 you have any closing remarks?

14 MS. DONOGHUE: Your Honor, I don't think
15 I can add anything that would differ from what the
16 company or what the DPA has submitted as part of its
17 closing arguments. By repeating anything, I would just
18 think it would prolong this hearing.

19 We will rest on what evidence we have
20 already presented.

21 HEARING EXAMINER LAWRENCE: HOA.

22 MR. KLEIN: I have one question for Ms.
23 Iorii first.

24 HEARING EXAMINER LAWRENCE: We really

1 don't follow that. This is a closing statement.

2 MR. KLEIN: She just made a statement
3 about corporate law. I was just wondering is federal and
4 state law --

5 MS. IORII: State. There is no federal
6 corporate.

7 MR. KLEIN: It has been an interesting
8 process. I really have to thank Your Honor for kind of
9 leading me through some of these formalities that have to
10 be done.

11 I don't believe that the negotiation
12 process was as open as people tend to say it was. I have
13 a feeling that the homeowners association, the public was
14 discounted in that process.

15 Unfortunately, I am not a professional.
16 I am just a citizen. I have an inherent distrust, and
17 that's just me, of some of the governing processes.

18 When I hear things like, it pays for us
19 to settle because it will cost us a lot of money to go
20 through the whole evidentiary process. You get the
21 feeling that, you know what, it may cost the company some
22 many. It may cost The Public Advocate some money. But
23 the money bottom line is, it's going to cost the
24 ratepayer because they are the ones that are paying for

1 the rate increase. That's the way I feel about this.

2 And I am sure some of of my neighbors back there feel the
3 same way.

4 Thank you. It has been interesting.

5 And where do we go from here?

6 HEARING EXAMINER LAWRENCE: Well, I will
7 close the record now. And then, after today, at some
8 point, I will issue a report and recommendation to the
9 Commission.

10 Each party then has 20 days to file any
11 exceptions to the report, if you disagree with it. And
12 then, after the 20-day period, it's set upon the
13 Commission's calendar and notice is sent to the parties
14 as to when the Commission will hear it. If you have an
15 availability problem on that particular day, it can be
16 rescheduled, but generally the parties try follow when it
17 has been noticed. And then the four Commissioners will
18 debate it in public in this room, sitting up here and
19 make the final decision.

20 My report is a non-binding
21 recommendation. The Commissioners make the final
22 decision. And then, eventually, after that, the
23 Commission actually issues its own order about what has
24 been decided in this case.

1 Thank you. That's what going to happen
2 from here on out. Thank you.

3 I want to thank everyone for attending
4 today. We did take things a little bit different
5 procedurally, but I thought it was necessary in order to
6 air out all of the issues in this case.

7 And I will get the report out to
8 everyone as soon as I can. Thank you very much.

9 (The Public Service Commission Hearing
10 was concluded at, approximately, 1:00 p.m.)
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C E R T I F I C A T E

STATE OF DELAWARE:

:

NEW CASTLE COUNTY:

I, Gloria M. D'Amore, a Registered Professional Reporter, within and for the County and State aforesaid, do hereby certify that the foregoing Public Service Commission Hearing, was taken before me, pursuant to notice, at the time and place indicated; that the statements of said parties was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the Public Service Commission Hearing is a true record of the statements given by the parties; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 11th day of August A.D. 2013.

GLORIA M. D'AMORE

REGISTERED PROFESSIONAL REPORTER

CERTIFICATION NO. 119-PS